

**OFFICE OF THE
STAFF JUDGE ADVOCATE**

CIVIL AND ADMINISTRATIVE LAW DIVISION

LINE OF DUTY INVESTIGATOR'S GUIDE



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LINE OF DUTY INVESTIGATION REPORT CHECKLIST

- NOTIFICATION/REQUEST FOR MEDICAL TREATMENT FORWARD TO HQ-----
- DD 261-----
- DA 2173-----
- ATTACHMENTS:
- MEMORANDUM FOR RECORD- Includes specific findings by Investigating officer.-----
- APPOINTMENT ORDER OF INVESTIGATING OFFICER - Signed by the Special Court Martial Convening Authority (Brigade Commander) or by the Brigade S-1 (if delegated)-----
- SOLDIER'S WARNING RIGHTS-----
- SWORN STATEMENT OF INDIVIDUAL (DA 2823)-----
- SWORN STATEMENTS OF WITNESSES, IF ANY (DA 2823)-----
- ALL MEDICAL DOCUMENTATION-----
- ALL OTHER RELEVANT DOCUMENTATION- Police reports, maps, photos, etc.-----
- ADVERSE FINDINGS LETTER-----
- CERTIFIED MAIL RETURN RECEIPT FROM ADVERSE FINDINGS LETTER-----

A GUIDE FOR THE LINE OF DUTY INVESTIGATING OFFICER (IO)

1. Introduction.

a. The Army's Line of Duty system stems from one basic premise: every soldier who incurs an injury or disease while conducting himself properly as a member of the Army is entitled to certain benefits. These benefits include pay and allowances; accrual of service and leave; and, in some instances, disability retirement. The important phrase is "while conducting himself properly as a member of the Army." The Line of Duty system is utilized to determine who is eligible to receive these benefits. AR 600-8-4, Line of Duty Investigation, 15 April 2004, prescribes the basic rules and procedures.

b. Basically, a line of duty determination is required whenever a soldier incurs an injury or disease, which incapacitates him from the performance of duty. It is important to realize that a line of duty determination involves answering two questions concerning "line of duty" and "conduct."

c. The "line of duty" question turns on an individual's status as a functioning member of the Army. "Line of duty" is a term of art involving more than the direct performance of military duties. For example, a person injured while on authorized pass or leave is as much in the line of duty as is a soldier injured while at his military post.

d. "Conduct" is a characterization of a soldier's behavior based on tort principles. These principles are summarized for guidance in 12 rules governing line of duty and misconduct determinations which are set forth in AR 600-8-4. For your convenience, these rules are attached at ____.

2. Line of Duty Determinations.

a. There are only three possible line of duty determinations:

(1). **LD** (in line of duty). This finding is made where an injury or disease (1) was incurred, contracted, or aggravated while the soldier was on active duty; was training in an active or reserve status; was excused from duty or training; or was AWOL (absent without leave) and was mentally unsound at the inception of the absence; and (2) the injury or disease was not proximately caused by the soldier's intentional misconduct or willful negligence. Most cases result in a determination of LD. This is the most favorable determination and qualifies the soldier involved for all available benefits. The other two possible determinations, both coming under the NLD subheading, are considered adverse and result in diminished benefits.

(2). **NLD-NDOM** (not in line of duty--not due to own misconduct). This finding is made where an injury or disease (1) was incurred, contracted, or aggravated while the soldier was AWOL, unless he or she was mentally unsound at the inception of the absence and (2) the injury or disease was not proximately caused by the soldier's intentional misconduct or willful negligence.

(3). **NLD-DOM** (not in line of duty--due to own misconduct). This finding is made where an injury or disease was proximately caused by the intentional or willful negligence of the soldier. Note that a finding of misconduct leads automatically to a finding of NLD (not in line of duty) regardless of the soldier's status at the time. If misconduct is not present, then the line of duty status must be resolved on other grounds.

b. There are three procedures that may result in a line of duty determination: a presumptive determination, an informal investigation, and a formal investigation. Which of these procedures must be utilized in a given case depends on the status of the soldier and the circumstances surrounding the injury, disease, or death. Note that a presumptive determination and an informal investigation may result only in a determination of in line of duty (LD). Since you have been appointed as a Line of Duty Investigating Officer (IO), you are following the formal investigation procedures under AR 600-8-4. Note that the procedures for formal boards of officers and investigations contained in AR 15-6, chapter 5, are not applicable to formal LD investigations.

3. Presumptions Governing Line of Duty Determinations.

a. Which line of duty determination will be made in a particular case is guided basically by a series of presumptions that have been developed. These presumptions are rebuttable. They apply however, unless evidence is discovered during the course of a line of duty investigation making them inapplicable. The basic presumption is that an injury or disease is presumed to have been incurred in line of duty (LD) and not due to the soldier's own misconduct. Note that the presumption covers both the line of duty finding and the characterization of conduct.

b. The presumption of line of duty finding can be rebutted by a showing of substantial evidence that the injury or disease was:

(1). Incurred or contracted while the soldier was neither on active duty nor engaged in authorized training in an active or reserve duty status;

(2). Incurred or contracted during a period of unauthorized absence; or

(3). Proximately caused by the intentional misconduct or willful negligence of the soldier.

c. The presumption as to the characterization of conduct can be overcome only by a showing of substantial evidence that the injury or disease was proximately caused by the intentional misconduct or willful negligence of the soldier.

d. A further presumption is that a soldier was in sound physical and mental condition upon entering military service. If this presumption is overcome by a showing of substantial evidence, it is further presumed that any other disability or death that results from a pre-existing injury or disease was caused by service aggravation. Only specific findings of natural progress of the pre-existing injury or disease, based upon well-established medical principles, as distinguished from medical opinion alone, are enough to overcome the presumption of service aggravation.

e. Death is presumed to be caused by accidental self-destruction, unless there is substantial evidence of a greater weight than supports any other conclusion that the death was caused by intentional misconduct or willful negligence. The law presumes that a sane person will not commit suicide. Therefore, evidence, which establishes merely the possibility of suicide, will not overcome the general line of duty presumption.

f. Under the old regulation, an actual line of duty determination was not made in a case resulting in death. Now, a line of duty determination is required.

4. Definitions.

a. Findings must be supported by substantial evidence, which means by a greater weight of evidence than supports any different conclusion. The evidence must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact. This standard of proof used in line of duty determinations is more analogous to the "preponderance of the evidence" standard used in administrative proceedings than the "beyond a reasonable doubt" standard used in courts-martial.

b. Proximate cause refers to the connecting relationship between an act of the soldier and the disease or injury that results. Proximate cause is a cause which, in a natural and continuous sequence, unbroken by a new cause, produces an injury or disease and without which the injury or disease would not have occurred. It is a moving or direct cause, as opposed to merely a contributing cause. In general, it must appear that under the circumstances, the soldier could have reasonably expected that the injury or disease might be caused by his or her conduct.

c. Intentional misconduct refers to any wrongful or improper conduct, which is intended or deliberate. Intent may be expressed by direct evidence of a soldier's statements or may be implied by direct or indirect evidence of the soldier's conduct. Misconduct does not necessarily involve committing an offense under the Uniform Code of Military Justice (UCMJ).

d. Willful negligence is a conscious and intentional omission of the proper degree of care, which a reasonably careful person would exercise under the same or similar circumstances. Willful negligence is a degree of carelessness greater than simple negligence. Willfulness may be expressed by direct evidence of a soldier's conduct. Willfulness will be presumed when the soldier's conduct demonstrates a gross, reckless, wanton or deliberate disregard for the foreseeable consequences of an act or failure to act. Willful negligence does not necessarily involve committing an offense under the UCMJ or local law.

e. Simple negligence is the failure to exercise that degree of care, which a person of ordinary prudence usually takes in the same or similar circumstances. Simple negligence alone does not constitute misconduct. An injury or disease caused solely by simple negligence is in line of duty unless it existed prior to service or occurred during a period of AWOL.

5. Formal Investigations.

a. Certain protections are available to the soldier being investigated. Before questioning by an official investigator, the soldier must be advised that he or she does not have to make any statement that is against his or her interests, that relates to the origin, incurrence, or aggravation of the injury or disease. Note that the soldier has the right to remain silent regardless of whether he is suspected of having committed a violation of the UCMJ. Statements made without such warning will not be used as evidence for an unfavorable line of duty determination. The IO should document in writing for the report that the required warning was given. Note that the soldier also has the right to consult with legal counsel at any time. The soldier is allowed to submit evidence for the IO's consideration regardless of whether the soldier gives a statement. The soldier's statement may be either sworn or unsworn. It is important to remember that the soldier's injury or disease may have arisen or was aggravated by his participation in conduct which could be punishable under the UCMJ. In such cases, the IO must also advise the soldier of his Article 31b rights and right to counsel. Good practice would dictate using DA Form 3881, Rights Warning Procedure/Waiver Certificate. This form is available on Forms Flow.

b. Although a loss of benefits may result from an adverse line of duty determination, such determinations are entirely administrative, and not punitive, in nature. Although a soldier may be subject to punishment under the UCMJ for the same act of misconduct, final action taken in a line of duty investigation has no bearing on any issue in a court-martial or other disciplinary proceeding. Conversely, such a judicial or disciplinary proceeding is not determinative of the line of duty determination.

c. The IO appointed to do a formal investigation will use DD Form 261, Report of Investigation--Line of Duty And Misconduct Status, and append appropriate statements and other documents to support his findings. The IO must ascertain dates, places, persons, and events definitely and accurately in order to provide the appointing/approving authority with an accurate understanding or "word picture" of the incident being investigated. The IO must ensure that the investigation contains enough pertinent information (direct and/or indirect evidence) to support his findings of fact and enable later reviews to be made without more information. A convenient checklist of evidence that should be included (as applicable) is attached.

d. If an adverse finding is contemplated against the soldier, based upon information obtained in the investigation, the IO will notify the soldier, in writing, of the proposed adverse finding and provide a copy of the investigation and the supporting evidence. A sample notification letter is attached. Certified mail, return receipt requested, should be used and the signed receipt attached to the LD investigation. The soldier will be warned of his right against self-incrimination and given a reasonable opportunity to submit a written rebuttal. If no response is received in a reasonable period of time, the IO may conclude the investigation and finalize his findings. If a response is received, the IO will review and evaluate the soldier's response prior to making his findings. The investigation should be completed within 50 calendar days of the incident causing the injury or disease or a written explanation for the delay should be made a part of the IO's comments on DD Form 261. If there are any questions concerning line of duty

investigations, you may contact your Administrative Law attorney in the Administrative/Civil Law Division, Office of the Staff Judge Advocate.

6. Rules Governing Line of Duty and Misconduct Determinations.

The specific rules of misconduct contained in AR 600-8-4 are restated as follows:

Rule 1. Injury or disease directly caused by the misconduct or willful negligence is not in line of duty. It is due to misconduct. This is a general rule and must be considered in every case in which misconduct or willful negligence appears to be involved. Generally, two issues must be resolved when a soldier is injured (or contracts a disease), whether the injury or disease was incurred in the line of duty and whether it was due to misconduct. Normally, the two issues are resolved at the same time under the same facts and same rules.

Rule 2. Mere violation of military regulation, orders, or instructions, or of civil or criminal laws, if there is no further sign of misconduct, is no more than simple negligence. Simple negligence is not misconduct. Therefore, a violation under this rule alone is not enough to determine that the injury or disease resulted from misconduct. However, the violation is one factor to be examined and weighed with the other circumstances.

Rule 3. Injury or disease that results in incapacitation because of the abuse of alcohol and other drugs is not in line of duty. It is due to misconduct. This rule is on the effect of the drug on the soldier's conduct, as well as the physical effect on his body. Any erratic or reckless conduct caused by the effect of the drug, which directly causes his injury or disease is misconduct. The fact that the soldier may have a pre-existing physical condition, which caused him to be susceptible to the effects of the drug, does not excuse such misconduct.

Rule 4. Injury or disease that results in incapacitation because of the abuse of intoxicating liquor is not in line of duty. It is due to misconduct. The principles in Rule 3 apply here. While the mere drinking of alcoholic beverages is not misconduct, one who voluntarily becomes intoxicated is held to as high a standard of conduct as one who is sober. Intoxication does not excuse his conduct. While normally there are behavior patterns common to persons who are intoxicated, some, if not all, of these characteristics may be caused by other conditions. For example, an apparent drunken stupor might have been seen caused by a blow on the head. Consequently, when the fact of intoxication is not clearly fixed, care should be taken to determine the actual cause of any irrational behavior, which is like or the same as that of intoxication.

Rule 5. Injury incurred while knowingly resisting a lawful arrest, or while attempting to escape from a guard or other lawful custody, is incurred not in line of duty. It is due to misconduct. One who resists arrest, or who attempts to escape from custody, can reasonably expect that necessary force, even that which may be excessive under the circumstances, will be used to restrain him and, is acting with willful negligence.

Rule 6. Injury incurred while tampering with, attempting to ignite, or otherwise handling an explosive, firearm, or highly flammable liquid in disregard of its dangerous qualities is incurred not in line of duty. It is due to misconduct. Unexploded ammunition, highly flammable liquids, and firearms are inherently dangerous. Their handling and use require a high degree of care. A soldier who knows the nature of such an object or substance and who voluntarily or willfully handles or tampers with these materials

without authority or in disregard of their dangerous qualities is willfully negligent. This rule does not apply when a soldier is required by assigned duties or authorized by appropriate authority to handle the explosive, firearm, or liquid, and reasonable precautions have been taken. The fact that the soldier has been trained or worked with the use or employment of such objects or substances will have an important bearing on whether reasonable precautions were observed.

Rule 7. Injury caused by wrongful aggression, or voluntarily taking part in a fight or like encounter, in which one is equally at fault in starting or continuing, is not in line of duty. It is due to misconduct. An injury received by a soldier in an affray in which he is the aggressor is caused by his own misconduct. This rule does not apply when a person is the victim of an unprovoked assault and he sustains injuries in an attempt to defend himself. Provocative actions or language used by the soldier, in which a reasonable person would expect retaliation, is a willful disregard for personal safety, and injuries directly resulting therefrom are due to misconduct. When an adversary uses excessive force or means that could not have been reasonably foreseen in the incident, the resulting injury is not considered as having been caused by misconduct. Except for self-defense, for a soldier to persist in a fight or other encounter after his adversary produces a dangerous weapon is to act in willful disregard for safety and is willful negligence.

Rule 8. Injury caused by driving a vehicle when in an unfit condition, and the soldier knew or should have known about it, is not in line of duty. It is due to misconduct. A soldier involved in an automobile accident caused by his having fallen asleep while driving is not guilty of willful negligence solely because he fell asleep. The test is whether a person, under the same circumstances, would undertake the trip without falling asleep while driving. Unfitness to drive may have been caused by voluntary intoxication or use of drugs.

Rule 9. Injury because of erratic or reckless conduct without regard for personal safety or the safety of others is not in the line of duty. It is due to misconduct. This rule has its chief application in the operation of a vehicle, but may be applied with any deliberate conduct, which risks the safety of self or others. "Thrill" or "dare-devil" type activities also are examples in which this rule may be applied.

Rule 10. A wound or other injury deliberately self-inflicted by a soldier who is mentally sound is not in line of duty. It is due to misconduct. Although a line of duty or misconduct determination in death cases is not required, the suicide or attempted suicide is so related to the self-infliction of wounds or other injuries that it should be discussed. Suicide is the deliberate and intentional destruction of one's own life by a person of years of discretion and a sound mind. The law presumes that a sane man will not commit suicide (or make a bona fide attempt to commit suicide). This presumption prevails until overcome by substantial evidence and a greater weight of the evidence than supports any different conclusion. Evidence, which merely establishes the possibility of suicide, or merely raises a suspicion that death is due to suicide, is not enough to overcome the general line of duty presumption. However, in some cases, a determination that death was caused by a deliberately self-inflicted wound or injury may be based on circumstances surrounding the finding of a body. These circumstances

should be clear and unmistakable and there should be no circumstances to the contrary.

Rule 11. Misconduct or willful negligence of another person is charged to a soldier if the latter has control over and is thus responsible for the former's conduct, or if the misconduct or neglect shows enough planned action to establish a joint enterprise. The mere presence of the soldier is not a basis for charging him with the misconduct or willful negligence of another, even though by speaking up he may have had some influence over the circumstances. However, even though a soldier is not the principal actor in acts, which constitute misconduct, if he has substantially participated with others in such venture, his conduct will be misconduct.

Rule 12. The line of duty and misconduct status of a soldier injured or incurring disease while taking part in outside activities, such as business ventures, hobbies, contests, professional or amateur athletic activities, is determinable as any other case under the applicable rules and facts presented in the case. To determine whether an injury is due to willful negligence, the nature of the outside activity should be considered with the training and experience of the soldier.

TIPS FOR INVESTIGATING OFFICER

SUICIDES AND SUICIDE ATTEMPTS

Refer to AR 600-8-4, Chapter 4, para 11 for general guidance on gathering information and conducting investigations into circumstances leading up to suicides or suicide attempts.

Consider the following during conduct of investigation:

a. Contact the Criminal Investigation Division field office at the installation with geographic responsibility for the area in which the soldier's death occurred as well as the support military staff judge advocate for guidance prior to and during conduct of the LD investigation.

b. Find out with whom the soldier had spent time prior to the incident and interview them to see if the soldier's behavior had changed from the usual behavior. Ask for changes for up to a month prior to the incident in an attempt to uncover changes in personality. Ask family members, friends, supervisors, and subordinates. Contact chaplains and mental health personnel at the supporting military medical treatment facility to see if the soldier had been seen for counseling. Although these two sources may not be able to reveal the information disclosed during counseling sessions because of confidentiality, they will at least be able to advise if the soldier sought counseling and if he or she was considered suicidal.

c. Always determine if Blood Alcohol Test (BAT) was conducted. If not done, indicate why not. If intoxication is suspected as a contributing factor to the incident, but a BAT was not conducted, on what was the suspected intoxication based, slurred speech, staggering gait, incoherent thought patterns?

d. If alcohol or drug use is suspected, interview witnesses who saw the soldier prior to the incident to determine physical state or behavior. Ascertain how many hours before incident soldier had started and stopped drinking.

e. If an overdose of medication, either prescription or non-prescription was used, determine when and how the soldier obtained the medicines and how many he took.

f. Find out if the soldier asked for help or advised someone of what he had done immediately after the action, and if so, whether he or she expressed any remorse for the suicide attempt.

g. Was there a possibility that an apparent motor vehicle accident was actually a suicide attempt made to look like an accident for insurance purposes? If either the military or civilian police conducted an investigation, determine whether these indicate possible suicide gestures on the part of the victim and upon what basis this determination was made:

driving at a high rate of speed,

walking down the middle of a road,

or running out between parked cars?

h. What was the state of mind (anger, excitement, depression) of the soldier prior to the suicide/suicide attempt.

i. For incidents involving firearms, determine how the soldier got the weapon and what his level of expertise was in handling that type of weapon.

j. Did the soldier leave a note indicating that he or she wanted to end his or her life or to get out of a distressing situation?

k. Check to determine if local authorities have done an investigation or were involved in any way. Translated legible copies of their investigations or reports must be provided.

l. Include a mental health assessment with LD investigation for all suicides and suicide attempts. Line of Duty determinations of suicide or attempted suicide must determine whether the soldier was mentally sound at the time of the incident. The question of sanity can only be resolved by inquiring into and obtaining evidence of the soldier's social background, actions and moods immediately prior to the suicide or suicide attempt, troubles that may have motivated the incident and examinations or counseling by specially experienced or trained persons. In all cases of suicides or suicide attempts, a mental health officer must review the evidence collected to determine the biopsychosocial factors that contributed to the soldier's desire to end his or her life. The mental health officer will render an opinion as to probable causes of the self destructive behavior and whether the soldier was mentally sound or unsound at the time of the incident and on what basis was this determination founded.

TIPS FOR INVESTIGATING OFFICER

PASSENGERS INVOLVED IN MOTOR VEHICLE ACCIDENTS

Refer to detailed guidance for LD investigations on vehicular accidents. Why is a LD investigation necessary for passengers, even if alcohol is involved? If the investigation shows the driver was in fact sober at the time of the accident, even if the passenger is highly intoxicated, then an informal LD investigation validating this fact is generally all that is required. However, if the driver is also intoxicated, it becomes the responsibility of the IO to make the following determinations:

a. What was the physical condition of the driver including sobriety, fatigue, or exhaustion, and the contributing effect, if any, of the physical condition to the accident? Was the passenger aware of these conditions when he or she got into the car with the driver?

b. Determine the state of mind (anger, excitement, depression) of the driver. Was the passenger aware of the driver's state of mind when he or she got into the car with the driver?

c. Always determine if a Blood Alcohol Test (BAT) was conducted for both the driver and the passenger and provide a copy of the written results. If not done, indicate why not. If intoxication is suspected, but a BAT was not conducted, on what was the suspected intoxication based, e.g., smell of alcohol on breath, slurred speech, staggering gait, incoherent thought patterns? Copy of autopsy required.

d. If alcohol or drug use is suspected, interview witnesses who saw the soldier prior to or just after the incident to determine physical state or behavior. Besides drinking buddies, try to find other witnesses. Ascertain how many hours before incident the soldier had started and stopped drinking.

e. Ascertain how long the passenger and driver were together before the accident. Find out where the trip began and how far they had traveled together before the accident occurred.

f. Determine whether the passenger knew that the driver was intoxicated before he got in the car with him or her. If the passenger was fully aware that the driver was intoxicated and he or she still chose to ride with him or her rather than taking public transportation or waiting for another driver, then he or she may have been showing disregard for his or her own safety by riding with an impaired driver. If a passenger at a bus stop was asked if he or she needed a ride and was unaware that the driver had been drinking, then there might be no misconduct by accepting the ride.

g. What was the passenger doing at the time of the accident?

h. How was it determined that the passenger was in fact a passenger and not the driver? This is especially important if one or more persons were thrown from the vehicle or were outside the vehicle in a dazed condition when help arrived.

i. Determine whether local authorities have done an investigation or were involved in any way. Legible copies of their investigations or reports must be provided.

j. What was the conduct of passengers and their effect on the driver? If the passenger felt the driver was in an unfit condition, did he or she say or do anything to get the driver to pull over and stop driving? Did the passenger cause the driver to have the accident because of his or her behavior?

k. Ascertain whether the operator of the vehicle or others involved in the accident were charged or cited by law enforcement officials for the incident and the disposition of charges. If any charges were dismissed or dropped, provide the reason for this.

l. The use of seat belts may have a direct bearing on the severity of injuries sustained in an accident. But not wearing a seat belt, though a violation of military and possibly state laws, is not a proximate cause of an accident and should not be used as a sole cause for an adverse finding for a passenger involved in a motor vehicle accident.

TIPS FOR INVESTIGATING OFFICER

DRIVERS INVOLVED IN MOTOR VEHICLE ACCIDENTS

Refer to AR 600-8-4, Chapter 4, para 14 for detailed guidance on LD investigations of vehicular accidents.

a. How was it determined that the driver was in fact the driver and not a passenger? This is especially important if one or more persons were thrown from the vehicle or were outside the vehicle in a dazed condition when help arrived.

b. Always determine if a Blood Alcohol Test (BAT) was conducted for both the driver and the passenger and provide a copy of the written results. If not done, indicate why not. If intoxication is suspected, but a BAT was not conducted, on what was the suspected intoxication based, e.g., smell of alcohol on breath, slurred speech, staggering gait, incoherent thought patterns? A Copy of the Autopsy report will determine drugs and alcohol.

c. If alcohol or drug use is suspected, attempt to interview witnesses who saw the soldier prior to or just after the incident to determine physical state or behavior. Besides drinking buddies, try to find other witnesses. Ascertain how many hours before incident the soldier had started and stopped drinking.

d. If a police report indicates a motor vehicle was speeding, upon what basis was this determination made: radar gun, measured skid marks, car overturning?

e. Check to determine if local authorities have done an investigation or were involved in any way. Legible copies of their investigations or reports must be provided.

f. What was the conduct of passengers and their effect on the driver? If the passenger felt the driver was in an unfit condition, did he or she say or do anything to get the driver to pull over and stop driving?

g. Describe the make, model, and year of the vehicle(s) involved.

h. What were the traffic conditions at the scene of the accident?

i. Describe the road factors including all road characteristics, natural and man-made obstructions to the operator's vision, and traffic signs and signals.

j. Describe the light and weather conditions.

k. What was the posted speed limit and how far from the sign did the accident occur?

l. What was the physical condition of the driver including sobriety, fatigue, or exhaustion, and the contributing effect, if any, of the physical condition to the accident?

- m. Determine the state of mind (anger, excitement, depression, etc.) of the driver.
- n. Verify the driver's driving experience. Does the license match the type of vehicle being driven at the time of the accident?
- o. What was the conduct of passengers and their effect on the driver?
- p. Consider the possibility of mechanical defects, faulty brakes, badly worn tires, recent repair work done to vehicle, whether work was done by certified mechanic, possibility of any manufacture defects or recall notices as contributing factors.
- q. Ascertain whether the operator of the vehicle or others involved in accident were charged or cited by law enforcement officials for the incident and the disposition of the charges. If any charges were dismissed or dropped, provide the reason for this.
- r. For single car accidents, always ask if there was a possibility that the accident was a suicide attempt made to look like an accident for insurance purposes. If so, a mental health assessment must be included with the LD investigation.
- s. The use of seat belts may have a direct bearing on the severity of injuries sustained in an accident. But not wearing a seat belt, though a violation of military and possibly state laws, is not a proximate cause of an accident and should not be used as a sole cause for an adverse finding for a passenger involved in a motor vehicle accident.

APPOINTMENT ORDERS

(Appropriate Letterhead)

OFFICER SYMBOL

MEMORANDUM FOR (IO's Name and unit)

SUBJECT: Appointment Order for Line of Duty Investigation

1. Effective (DATE), (RANK, NAME, and SSN of IO) is hereby appointed as the investigating
2. AUTHORITY: AR 600-8-4, Line of Duty Policy, Investigation, and Procedures
3. PURPOSE: To perform a Line of Duty investigation IAW AR 600-8-4, obtaining details pertaining to the injuries/death of (Soldier's Name, SSN, Soldier's unit,) that occurred in (Place) on (date occurred).
4. PERIOD: Until the investigation is completed and not further investigation is required, unless released sooner by the appointing authority.
5. SPECIAL INSTRUCTIONS: Conduct of this investigation will be your PRIMARY duty until the investigation is submitted to the appointing authority. Your findings will be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. Your report of investigation will be submitted to this headquarters NLT (SUSPENSE DATE).
6. POC this action is (Line of Duty Case Manager), (xxx) xxx-xxxx.

APPOINTING AUTHORITY

COMPLETION OF DD 261

The following are directions to fill out the DD 261.

- | | |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| 1. REPORT DATE | Today's date |
| 2. INVESTIGATION OF | Check type of investigation |
| 3. STATUS | Duty Status of Soldier |
| 4. TO | Major Command of Soldier |
| 5. NAME | |
| 6. SSN | |
| 7. GRADE | SPC/E4 |
| 8. ORGINATION AND STATION | Soldier's assigned unit |
| 9. OTHER MILITARY PERSONNEL | As Applicable |
| 10. a | Time/Date/City, State of incident |
| b | How injury/death occurred |
| c | From medical documents |
| d | Duty status at time of injury/death |
| e | Was soldier AWOL |
| f | Select appropriate |
| g | For Self-inflicted or attempted self-inflicted |
| | Explanations of blocks above if applies |
| 11. | Completed after conclusion of Investigation |
| 12. INVESTIGATING OFFICER | Self-explanatory |
| 13. ACTION BY APPOINTING AUTHORITY | Special Court Martial Authority |
| 14. ACTION BY REVIEWING AUTHORITY | NG soldier's only |
| 15. FINAL APPROVAL | General Court Martial Authority
(May be delegated in writing to a field grade officer on the staff of the GCMA) |
| 16. NAME | |
| 17. SSN | |
| 18. GRADE | SPC/E4 |
| 19. APPOINTING AUTHORITY | Leave blank unless he disagrees with the finding |
| 20. REVIEWING AUTHORITY | Leave blank unless he disagrees with the finding |
| 21. APPROVING AUTHORITY | Leave blank unless he disagrees with the finding |

REPORT OF INVESTIGATION LINE OF DUTY AND MISCONDUCT STATUS				1. REPORT DATE (YYMMDD) 050725	
2. INVESTIGATION OF (X one) <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> DISEASE <input type="checkbox"/> ILLNESS <input type="checkbox"/> DEATH				3. STATUS (X as applicable) <input checked="" type="checkbox"/> a. REGULAR OR EAD	
4. TO (Major Army or Air Force Commander) CDR, 101ST ABN DIV (AASLT), ATTN: AFZB-GC-MPD-PO-LD ** Should include Comander's information.				b. CALLED OR ORDERED TO AD FOR <input type="checkbox"/> (1) MORE THAN 30 DAYS <input type="checkbox"/> (2) 30 DAYS OR LESS	
5. NAME OF INDIVIDUAL (Last, First, Middle Initial) EXAMPLE, JOHN Q		6. SSN 111-11-1111	7. GRADE E-4	c. INACTIVE DUTY TRAINING (Type)	
8. ORGANIZATION AND STATION HHC, 326TH BRIGADE SPECIAL TROOPS BATTALION, FT CAMPBELL, KY 42223				d. SHORT TOUR OF ACTIVE DUTY FOR TRAINING	
9. OTHER MILITARY PERSONNEL INVOLVED IN THE SAME INCIDENT					
NAME (Last, First, Middle Initial) a.		SSN b.	GRADE c.	d. LOD INVESTIGATION MADE (X) YES NO	
				e. DURATION (Applies ONLY to 3.c. and d.) DATE (YYMMDD) HOUR	
				(1) START	
				(2) FINISH	
10. BASIS FOR FINDINGS (As determined by investigation)					
a. CIRCUMSTANCES	(1) HOUR 1130	(2) DATE (YYMMDD) 050601	(3) PLACE 123 Elm Street, CLARKSVILLE, TN 37043		
(4) HOW SUSTAINED Motorcycle accident. ** Should mirror information included in the DA Form 2173					
b. MEDICAL DIAGNOSIS Paraplegia, left posterior knee dislocation, paravertebral hematoma, and pulmonary contusions ** Should mirror DA Form 2173					
c. PRESENT FOR DUTY? (X) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	d. IF ABSENT: (X) <input checked="" type="checkbox"/> WITH AUTHORITY <input type="checkbox"/> WITHOUT AUTHORITY	(Do not complete 10.e. and f. in death cases.)	e. WAS INTENTIONAL MISCONDUCT OR NEGLECT THE PROXIMATE CAUSE? (X) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		f. WAS INDIVIDUAL MENTALLY SOUND? (X) <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
g. REMARKS This block should contain the specific information listed in AR 600-8-4. This information should be placed in a separate memorandum for record attached as an exhibit. This block should simply state that the remarks are included in the attached memorandum for record. Also include additional information in the memorandum if required by the type of accident (i.e. vehicle accident, firearm, suicide, etc).					
11. FINDINGS (X one. Do not complete in death cases.) <input checked="" type="checkbox"/> IN LINE OF DUTY <input type="checkbox"/> NOT IN LINE OF DUTY - NOT DUE TO OWN MISCONDUCT <input type="checkbox"/> NOT IN LINE OF DUTY - DUE TO OWN MISCONDUCT					
12. INVESTIGATING OFFICER					
a. TYPED NAME (Last, First, Middle Initial) INVESTIGATOR, JOHN Q		b. GRADE CPT/O-3	c. BRANCH OF SERVICE ARMY	d. SSN 222-22-2222	
e. ORGANIZATION AND STATION C, 326TH BRIGADE SPECIAL TROOPS BATTALION 1ST BRIGADE COMBAT TEAM, FT. CAMPBELL, KY 42223			f. SIGNATURE		
13. ACTION BY APPOINTING AUTHORITY			14. ACTION BY REVIEWING AUTHORITY		
a. HEADQUARTERS		b. DATE (YYMMDD)	a. HEADQUARTERS		b. DATE (YYMMDD)
c. (X one. Indicate reasons and substituted findings on back.) <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED			c. (X one. Indicate reasons and substituted findings on back.) <input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED		
d. TYPED NAME (Last, First, Middle Initial)			d. TYPED NAME (Last, First, Middle Initial) SAME AS FINAL APPROVING AUTHORITY		
e. GRADE	f. BRANCH OF SERVICE	g. SSN	e. GRADE	f. BRANCH OF SERVICE	g. SSN
h. SIGNATURE			h. SIGNATURE		
15. FINAL APPROVAL (For action of office indicated in Item 4.) Mark L. Ritter COL, GS Chief of Staff Fort Campbell, KY 42223-5000 Approved/Disapproved (give reason for disapproval) BY AUTHORITY OF THE SECRETARY OF THE ARMY					

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16. NAME OF INDIVIDUAL <i>(Last, First, Middle Initial)</i> EXAMPLE, JOHN Q	17. SSN 111-11-1111	18. GRADE E-4
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19. APPOINTING AUTHORITY - REASONS AND SUBSTITUTED FINDINGS

20. REVIEWING AUTHORITY - REASONS AND SUBSTITUTED FINDINGS

21. APPROVING AUTHORITY - REASONS AND SUBSTITUTED FINDINGS

23 July 2005

MEMORANDUM FOR John Q. Example, Headquarters, 101st Airborne Division (Air Assault),
Fort Campbell, Kentucky 42223

SUBJECT: Notice of pending adverse action in Line of Duty Investigation

1. I have reviewed the circumstances surrounding your incident and am currently proposing a finding of NOT IN LINE OF DUTY. You have the right to submit a statement on your behalf within 30 days of receipt of this letter to provide any evidence, clarifications, or explanations that may affect the final determination. Enclosed, you will find a copy of the current investigation to date and a form to complete and return to the Commander indicating whether you intend to exercise your right to submit a statement.

2. POC for this letter is the undersigned at (270) 555-5555.

JOHN Q. INVESTIGATOR
CPT, Line of Duty Investigator

NOTICE OF PENDING ADVERSE ACTION

OFFICE SYMBOL

MEMORANDUM FOR Commander, Army Human Resources Command, ATTN:
AHRC-PED-S, 200 Stovall Street, Alexandria, VA 22332

SUBJECT: Election of Rights

I have received a copy of the Line of Duty Investigation, and I have been advised of my rights. (Initial your election below).

 INT I will submit a statement on my behalf within 30 days after I received notice of this action. I understand that my case will be closed without further notice if I do not appeal within this time limit.

 INT I will not submit a statement on my behalf.

Signature _____, SSN _____ Date _____

Signature of IO _____ Date.

APPEAL RIGHTS NOTIFICATION

OFFICE SYMBOL

MEMORANDUM FOR Commander, Army Human Resources Command, ATTN:
AHRC-PED-S, 200 Stovall Street, Alexandria, VA 22332

SUBJECT: Election of Rights

I have received a copy of the Line of Duty Investigation, and I have been advised of my rights. (Initial your election below).

___INT___ I will appeal within 30 days after I received notice of this action. I understand that my case will be closed without further notice if I do not appeal within this time limit.

___INT___ I will not appeal.

Signature _____, SSN _____ Date _____

NOTE: Date this notice, elect one of the options, sign it, and mail it immediately

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION	2. DATE	3. TIME	4. FILE NO.
5. NAME (Last, First, MI)	8. ORGANIZATION OR ADDRESS		
6. SSN	7. GRADE/STATUS		

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject to the UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS (Continue on reverse side)

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES (If available)		3. SIGNATURE OF INTERVIEWEE
1a. NAME (Type or Print)		
b. ORGANIZATION OR ADDRESS AND PHONE		4. SIGNATURE OF INVESTIGATOR
2a. NAME (Type or Print)		5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights
 I want a lawyer I do not want to be questioned or say anything

2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2823) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:
 - a. Your official position.
 - b. Nature of offense(s).
 - c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:

"Before I ask you any questions, you must understand your rights."

 - a. "You do not have to answer my questions or say anything."
 - b. "Anything you say or do can be used as evidence against you in a criminal trial."
 - c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer

can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."
- or -
(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."
Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"
(If the suspect/accused says "yes," find out when and where. If the request was recent (i.e., fewer than 30 days ago), obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.

2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS (Continued)

USE THIS PAGE IF NEEDED. IF THIS PAGE IS NOT NEEDED, PLEASE PROCEED TO FINAL PAGE OF THIS FORM.

STATEMENT OF

TAKEN AT

DATED

9. STATEMENT *(Continued)*

INITIALS OF PERSON MAKING STATEMENT

PAGE

OF

PAGES

STATEMENT OF

TAKEN AT

DATED

9. STATEMENT (Continued)

AFFIDAVIT

I, _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE ____ . I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.

(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this ____ day of _____, at _____

ORGANIZATION OR ADDRESS

(Signature of Person Administering Oath)

(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT

PAGE OF PAGES