

**GUIDE FOR THE
LINE OF DUTY INVESTIGATING
OFFICER
(Army Regulation 600-8-4)**



**OFFICE OF THE STAFF JUDGE ADVOCATE
U.S. ARMY NORTH AND FT SAM HOUSTON**

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1. Introduction.

a. The Army's Line of Duty system stems from one basic premise: every soldier whose service is interrupted by injury, disease or death 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 Policy, Procedures, and Investigations, dated 4 September 2008, prescribes standards and considerations used in determining line of duty status.

b. Basically, a line of duty determination is required whenever a soldier incurs an injury or disease, which incapacitates him or her 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." Line of duty investigations are conducted essentially to arrive at a determination of whether misconduct or negligence was involved in the disease, injury, or death and, if so, to what degree.

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 or her 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 Appendix B of AR 600-8-4. For your convenience, these rules are attached as Enclosure A.

2. Investigating Officer.

a. The IO must be free from bias or prejudice. The IO should never begin the investigation with predetermined ideas as to the cause of the injury, disease, or death. To make a thorough and impartial investigation, the IO should determine the actual facts, not as reported, but as they actually occurred, as far as possible. The IO should be prompt in conducting and completing the investigation as delays result in the failure to secure important information.

b. The IO may be a commissioned officer, warrant officer, or a commissioned officer of another U.S. military service in joint activities where the Army has been designated as the executive agent. The IO will be senior in grade to the soldier being investigated, except where the appointing authority determines that it is impracticable because of military exigencies. (not due to mere inconvenience).

3. Two types of investigations.

a. Informal Investigation – will be conducted when no misconduct or negligence is suspected and formal investigation is not required. At a minimum an informal LD investigation typically consists of DA Form 2173 and supporting exhibits completed by the MTF and the unit commander and approved by the appointing authority, Special court-martial convening authority (SPCMCA) is appointing and approving authority. (National Guard appointing authority is commander of at least battalion or squadron size unit). SPCMCA should approve informal investigation in writing “By Authority of the Secretary of the Army.” The final determination of an informal LD investigation can only result in a determination of "in LD" only, except as provided in paragraph 4–8(c)(1).

Completion of an Informal Investigation: 40 calendar days after incident. (final review by approving authority)

b. Formal Investigation

A formal LD investigation is a detailed investigation that normally begins with DA Form 2173 completed by the MTF and annotated by the unit commander as requiring a formal LD investigation. The appointing authority (SPCMA), on receipt of the DA Form 2173, appoints an investigating officer who completes DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the GCMCA for approval. (may be delegated to field grade officer on the GCMCA’s staff)

Completion of a Formal Investigation: 75 calendar days after incident. (final review by approving authority)

4. Cases Involving Death.

a) Prior to 10 September 2001, deaths did not require a line of duty determination. Congress authorized the payment of Survivor benefit Plan benefits to Service members who die on active duty “in the line of duty” regardless of amount of time of service (FY 02 National Defense Authorization Act).

b) All active duty deaths on or after 10 September 2001 require a line of duty determination. An investigation is required for all deaths except death by natural causes, or when death occurs while a passenger on a common commercial carrier or military aircraft, or death as the result of combat, attack by terrorists or other forces antagonistic to the interests of the United States, or in friendly fire incidents, or while a prisoner of war.

5. Requirements for Line of Duty Investigations.

a. Line of duty investigations are conducted essentially to arrive at a determination of whether misconduct or negligence was involved in the disease, injury, or death and, if so, to what degree. Depending on the circumstances of the case, an LD investigation may or may not be required to make this determination.

- b. An investigation is not necessary in the following circumstances:
 - (1) Disease, except cases under which a formal LD investigation must be conducted (listed below).
 - (2) In the case of injuries clearly incurred as a result of enemy action or attack by terrorists.
 - (3) In the case of death due to natural causes or while a passenger in a common commercial carrier or military aircraft.

- c. A formal LD investigation must be conducted in the following circumstances:
 - (1) Injury, disease, death, or medical condition that occurs under strange or doubtful circumstances or is apparently due to misconduct or willful negligence.
 - (2) Injury or death involving the abuse of alcohol or other drugs.
 - (3) Self-inflicted injuries or possible suicide.
 - (4) Injury or death incurred while AWOL.
 - (5) Injury or death that occurs while an individual was en route to final acceptance in the Army.
 - (6) Death of a USAR or ARNG soldier while participating in authorized training or duty.
 - (7) Injury or death of a USAR or ARNG soldier while traveling to or from authorized training or duty.
 - (8) When a USAR or ARNG soldier serving on an AD tour of 30 days or less is disabled due to disease.
 - (9) In connection with an appeal of an unfavorable determination of abuse of alcohol or other drugs (para 4-10a, AR 600-8-4).
 - (10) When requested or directed for other cases.

6. Investigation.

- a. The procedures for formal boards of officers and investigations contained in AR 15-6, chapter 5, are not applicable to formal LD investigations. However, the general guidance of AR 15-6, chapter 5, applies unless this regulation provides more specific or different guidance.

- b. The investigation will ascertain dates, places, persons, and events definitely and accurately. It is essential to provide an accurate understanding or "word picture" of the incident being investigated. The investigation should contain enough pertinent information and data to enable later reviews to be made without more information.

- c. All findings of fact should be supported by exhibits. Copies of military or civilian police accident reports, pertinent hospitalization or clinical records, autopsy reports, and written statements shall be attached as exhibits (labeled A, B, C, and so forth), when appropriate. Written statements by the commander describing matters personally observed and learned are convenient means to document facts and, when appropriate, shall be attached.

d. 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. Any involuntary statement against a soldier's interests, made by the soldier, is invalid (10 USC 1219). A statement voluntarily provided by the soldier after such advice may be considered. The IO should document in writing for the report that the required warning was given. If any information is obtained from the soldier, a statement attesting the above warning was given must be attached to the DA Form 2173. Any written correspondence requesting information from the soldier will also contain the above warning and be attached to the DA Form 2173. **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 because of, or was aggravated by, his or her participation in conduct which could be punishable under the UCMJ. In such cases, the IO must also advise the soldier of his/her 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.

e. 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.

f. 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 as Enclosure B. Certified mail, return receipt requested, should be used and the mailing receipt and return 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.

7. Standards used when making a LD determination.

Decisions on LD determinations will be made in accordance with the standards listed below:

a. Injury, disease, or death proximately caused by the soldier's intentional misconduct or willful negligence is "not in LD—due to own misconduct." Simple or ordinary negligence or carelessness, standing alone, does not constitute misconduct.

b. An injury, disease, or death is presumed to be in LD unless refuted by substantial evidence contained in the investigation.

c. Line of Duty determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact, considering—

(1) All direct evidence, that is, evidence based on actual knowledge or observation of witnesses; and/or

(2) All indirect evidence, that is, facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind.

d. No distinction will be made between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than the statement of an eyewitness. The weight of the evidence is not determined by the number of witnesses or exhibits but by the investigating officer and higher authorities accomplishing the following actions:

(1) Considering all the evidence.

(2) Evaluating factors such as a witness's behavior, opportunity for knowledge, information possessed ability to recall and relate events, and relationship to the matter to be decided.

(3) Considering other signs of truth.

e. The rules in appendix B will be considered fully in deciding LD determinations. These rules elaborate upon, but do not modify, the basis for LD determinations.

8. Line of Duty Determinations.

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

(1). **LD** (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 (not in line of duty) 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.

9. Conclusion. If there are any questions concerning line of duty investigations, you may contact an Administrative Law attorney in the Administrative/Civil Law Division, Office of the Staff Judge Advocate, ARNORTH and Fort Sam Houston, at 221-2373.

How do I suggest changes to this guide?

Please address any comments concerning this guide to the Office of the Staff Judge, Administrative/Civil Law Division to the following email address usarmy.jbsa.asa.mbx.rersja@mail.mil . Subject Heading: *Guide for the Line of Duty Investigating Officer.*

Enclosure A

Rules Governing Line of Duty and Misconduct Determinations

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

Rule 1

Injury, disease, or death directly caused by the individual's 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 where there might have been misconduct or willful negligence. Generally, two issues must be resolved when a soldier is injured, becomes ill, contracts a disease, or dies—(1) whether the injury, disease, or death was incurred or aggravated in the line of duty; and (2) whether it was due to misconduct.

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, disease, or death resulted from misconduct. However, the violation is one circumstance to be examined and weighed with the other circumstances.

Rule 3

Injury, disease, or death 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 applies to the effect of the drug on the soldier's conduct, as well as to the physical effect on the soldier's body. Any wrongfully drug-induced actions that cause injury, disease, or death are misconduct. That the soldier may have had a pre-existing physical condition that caused increased susceptibility to the effects of the drug does not excuse the misconduct.

Rule 4

Injury, disease, or death 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 merely drinking alcoholic beverages is not misconduct, one who voluntarily becomes intoxicated is held to the same standards of conduct as one who is sober. Intoxication does not excuse misconduct. 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 caused by a blow to 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.

Rule 5

Injury or death 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 or her and, is acting with willful negligence.

Rule 6

Injury or death 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 or death caused by wrongful aggression or voluntarily taking part in a fight or similar conflict in which one is equally at fault in starting or continuing the conflict, when one could have withdrawn or fled, is not in line of duty. It is due to misconduct. An injury received or death suffered by a soldier in an affray in which he or she is the aggressor is caused by his or her own misconduct. This rule does not apply when a soldier is the victim of an unprovoked assault and sustains injuries or dies while acting in self-defense. The soldier's provocative actions or language, for which a reasonable person would expect retaliation, is a willful disregard for personal safety, and injuries or death directly resulting from them 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 or death is not considered to have been caused by misconduct. Except for self-defense, a soldier who persists in a fight or similar conflict after an adversary produces a dangerous weapon is acting in willful disregard for safety and is therefore willfully negligent.

Rule 8

Injury or death caused by a soldier driving a vehicle when in an unfit condition of which the soldier was, or should have been aware, is not in line of duty. It is due to misconduct. A soldier involved in an automobile accident caused by falling asleep while driving is not guilty of willful negligence solely because of falling asleep. The test is whether a reasonable person, under the same circumstances, would have undertaken the trip without expecting to fall asleep while driving. Unfitness to drive may have been caused by voluntary intoxication or use of drugs.

Rule 9

Injury or death 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 that risks the safety of self or others. "Thrill" or "dare-devil" type activities are also examples of when 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. Suicide is the deliberate and intentional destruction of one's own life. The law presumes that a mentally sound person 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 that merely establishes the possibility of suicide, or merely raises a suspicion that death is due to suicide, is not enough to overcome the in 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 evidence to the contrary.

Rule 11

Misconduct or willful negligence of another person is attributed to the soldier if the soldier has control over and is responsible for the other person's conduct, or if the misconduct or neglect shows enough planned action to establish a joint venture. The mere presence of the soldier is not a basis for charging the soldier with the misconduct or willful negligence of another, even though the soldier may have had some influence over the circumstances or encouraged it. If the soldier, however, has substantially participated with others in the venture, then that is misconduct.

Rule 12

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

Enclosure B

Sample Notification Letter

(Office symbol)

(date)

MEMORANDUM FOR SFC John D. Doe, 000-00-0000, Medical Holding Detachment,
Dewitt Army Hospital, Ft. Belvoir, VA 22060

SUBJECT: Line of Duty Investigation

1. As you are aware, I have been appointed as the investigating officer to conduct a Line of Duty Investigation for the purpose of obtaining details surrounding the circumstances of your injuries as a result of your accident on 1 January 2010.
2. Based upon the evidence that I have collected, I believe your injuries were incurred **NOT IN THE LINE OF DUTY - DUE TO YOUR OWN MISCONDUCT**. This evidence is attached for your review.
3. Due to the adverse impact this determination may have, you are invited to make a statement on your own behalf; however, as you were informed previously, you have the right to not make any statement relative to the origin, incurrence, or aggravation of your injuries. [If you were required to advise the soldier of his/her Article 31 rights earlier, then you should also remind him or her of that previous rights warning.]
4. If you desire to make a statement, it will be taken into consideration before my final determination is made. Your statement must be completed and forwarded within 10 business days after receipt of this correspondence.

9 Encls

1. Appointing Letter
2. DA Form 2173
3. Stmt, SFC Henry
4. Stmt, SSG Johnson
5. Stmt, SSG Williams
6. Stmt, IO dtd 18 Jan 04 (Auto Dealer)
7. Stmt, IO dtd 18 Jan 04 (PAD)
8. Stmt, IO dtd 18 Jan 04 (CO and 1SG)
9. Accident Report

GEORGE SMITH
CW2, USA
Investigating Officer

Enclosure C

Formal LD Evidence Checklist

- Complete name, grade, social security number, organization, and station of the soldier killed, suffering from a disease, or injured as a result of an incident or the event under investigation.
- All facts leading up to and connected with an injury, disease, or death.
- Copies of military or civilian police reports, pertinent hospitalization or clinical records, autopsy reports, records of coroner's inquests or medical examiner's reports, pathological and toxicological studies, and boards of inquiry for missing persons.
- Complete information concerning the site and terrain where the incident in question occurred, and photographs, maps, charts, diagrams, or other exhibits that may be deemed helpful to a complete understanding of the incident.
- All pertinent facts with respect to the duty, leave, pass, or unauthorized absence status of an individual at the time of the incident resulting in his injury or death.
- Complete information as to the person's status in relation to extended AD, ADT, IDT, and so forth (or travel to or from such duty), at the time of the incident, when the person involved is a soldier of a Reserve Component.
- Evidence regarding the state of intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident, when relevant.
- Evidence as to the general appearance and behavior, clear and rational speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment shall be made to determine the quantity and nature of the intoxication agent used and the period of time over which used by the person.
- Results of any blood, breath, urine, or tissue tests for the intoxicating agent should also be obtained and submitted as exhibits (actual lab slip, if possible).
- Evidence regarding the mental competence or impairment of the deceased or injured person, when relevant.

- In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person shall be obtained. This will include all available evidence about the person's social background, his or her actions and moods immediately prior to the suicide or suicide attempt, any troubles that might have motivated the incident, and any pertinent examination or counseling by specially experienced or trained persons. Personal notes or diaries of the deceased are valuable evidence.
- In the case of a death by suicide or a death resulting from an accident involving unusual or suspicious circumstances (for example, a single car motor vehicle accident) or where the cause of death is not clear, obtain the opinion of a mental health officer as to the probable causes of the self-destructive behavior and whether the soldier was mentally sound at the time of the incident. (See para. 4-11b, AR 600-8-4)
- Documentation that statements solicited from an injured soldier with respect to the incurrence or aggravation of his or her disease or injury is in compliance with para. 3-3b, AR 600-8-4.
- Additional pertinent procedures or special considerations as outlined in chapter 4 should be reviewed before conducting and completing the investigation.
- The DD Form 261 will be prepared as follows:
 - The report will be unclassified when possible. Classified material will not be attached unless it is material to the investigation.
 - The information below will be included in item 10g, DD Form 261, when appropriate. If additional space is needed, the IO may attach a continuation sheet identifying, at the top, the name of individual concerned, social security number, and date of injury, death, or onset of disease.
 - Summary of circumstances and basis for determination.
 - Clarification of any discrepancy in the date and place of injury or death or in the evidence as to the duty status of the soldier.
 - Reason for not interviewing the person whose LD status is being investigated or any witnesses whose testimony may be material.
 - Comments of the IO on the credibility of statements of witnesses.
 - List of exhibits.
- Documentation will be lettered and attached as exhibits to DD Form 261 in the order below:
 - IO Appointing Letter.
 - DA Form 2173.
 - Documentation attesting that statements solicited from an injured soldier regarding the incurrence or aggravation of his disease or injury are in compliance with paragraph 3-3b, AR 600-8-4.

- Copy of orders to active duty or periodic advance training scheduled for guardsmen and reservists on AD or Reserve duty training.
 - Report of autopsy findings. This includes blood alcohol results and toxicology studies.
 - Report of inquest.
 - Statements of witnesses and person being investigated.
 - Photographs, maps, charts, and so forth, if relevant.
 - Copy of letter of sympathy written to the next of kin in death cases.
 - Statement or medical form from medical authorities on period of hospitalization because of injury or disease.
 - Additional medical forms or statements should only be used when the information in section I, DA Form 2173 is inadequate to complete a formal investigation.
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- Any other exhibits relevant to the case.
 - All exhibits are legible or a typed copy has been prepared from the original.
 - Translation of the exhibits, if exhibits in another language.
 - If an adverse determination is contemplated against the soldier, a copy of the letter notifying the soldier of the proposed adverse determination and copies of the mailing receipt and return receipt (certified mail should be used)