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AR 600-33

JOINT MESSAGEFORM

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BOOK MESSAGE HANDLING INSTRUCTIONS

FROM: CDR TAGCEN WASH DC//DAAG-PEC

TO: ALL HOLDERS OF ID COPIES OF AR 600-33 AND AR 600-10

*Rec'd 2/1/77*

UNCLAS

SUBJECT: Interim Change to AR 600-33, Line of Duty Investigations, and AR 600-10,  
The Army Casualty System

1. This interim change is being distributed through the publications pinpoint distribution system to all holders of AR 600-33 and AR 600-10, in accordance with DA Form 12-9A, block \_\_\_\_\_.
2. This change expands procedures for processing line of duty investigations and accomplishing casualty reporting in conjunction with deaths due to suspected homicide or suicide.
3. The following additions will be made to the applicable regulation:
  - a. AR 600-33: Page 3-4, para 3-8c(10) is superseded as follows:
    - (10) Summary of any report conducted by criminal investigations (only if necessary to provide a complete investigation). However, in the event of non-combat deaths where medical authorities cannot determine that death resulted from natural causes, the LOD report will include a statement (oral or written) from CID which will indicate the manner of death, e.g., suicide, murder, accidental, or undetermined.

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	SIGNATURE <i>G.K. Plumlee</i>		

DD FORM 173  
1 DEC 70

REPLACES DD FORM 173, 1 JUL 68, WHICH WILL BE USED.

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b. AR 600-10: Page 2-1, para 2-3c is added as follows: c. Casualty reporting activities will advise the supporting CID activity of any non-combat death where medical authorities cannot determine that death resulted from natural causes. This fact will be included in item 73 of the Casualty Report.

4. The following changes will be made to AR 600-10 in pencil:

a. Page 3-4, Table 3-1: Change file symbols for USAFAC from FINCS-A to FINCP-G and FINCM-BB to FINCM-A. Change file symbol DAMO-SSO to DAMO-SSA.

b. Page 3-4, Table 3-1: Add footnote 12/ as follows: 12/ Do not include USAFAC as an information addressee on reports of civilians who die overseas.

c. Page C-1, Appendix C: Change CDR JUSMAG, Manila to read US Army Services Element.

5. Page 5-2, Para 5-6a (1) is superseded as follows: 5-6a (1): Individuals assigned to the US Army Recruiting Command and US Army Military Enlistment Processing Command (exempt from personal notification only).

6. File this change sheet in front of the publication for reference purposes.

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AR 600-33

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BOOK NO	MESSAGE HANDLING INSTRUCTIONS								
<p>FROM: CDRTAGCEN WASHDC//DAAG-PES//</p> <p>TO: All holders of copies of <u>AR 600-33</u></p> <p>SUBJECT: This interim change is being distributed through Publications pinpoint distribution system to all holders of AR 600-33.</p> <p>1. The Judge Advocate General ruled that the line of duty determination for a service member with a condition diagnosed as a psychosis must be made as prescribed under the provisions of paragraph 2-16, Army Regulation 600-33, 16 December 1974 and paragraphs 2-2 and 2-3, Army Regulation 635-40 25 February 1975, both of which implement the provisions of Department of Defense Directive 1332.18, 9 September 1968, as changed. The application of a presumption, either in favor of the member or against the member, based upon the current provision of paragraph 2-8a(1), Army Regulation 600-33, <u>SUPRA</u>, conflicts with sections V.B. and C. of the cited DOD Directive, and therefore is legally objectionable.</p> <p>2. Likewise, the application of a "120 Day Rule" to service members with psychoneurotic disorders is legally objectionable for the same reason.</p> <p>3. In accordance with the above determination, effective immediately AR 600-33, LD investigations is changed as follows:</p> <p>Para 2-8a - Delete fourth sentence and subparagraphs (1) and (2).</p> <p>Para 2-9a - Delete seventh sentence and subparagraphs (1) and (2). ]</p>									
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4. Para 3-5d(7) is ~~from~~ changed as follows: An EPTS condition is usually determined by the physician during ~~the~~ examination or treatment of the member. Medical records are appropriately annotated by the physician as to whether the condition existed prior to service. If a LD determination is required, information from the medical records and, if necessary, a statement from the attending physician, will be used to support a finding that an EPTS condition was or was not aggravated.
5. Para 3-6 - Add - Whether the LD investigation is completed within the time limits as indicated by Tables 3-1 and 3-2, has no bearing on the outcome of the determination.
6. Table 3-1 should read Processing Informal.
7. Table 3-2 Line 3 - Delete - appoint on orders and add A Disposition Form or letter will be used to appoint.
8. These changes will be included in the next revision of AR 600-33.

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DD FORM 173  
1 DEC 70

REPLACES DD FORM 173, 1 JUL 68, WHICH WILL BE USED.

*Replacment*

ARMY REGULATION }  
No. 600-33

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
WASHINGTON, DC 16 December 1974

PERSONNEL—GENERAL  
LINE OF DUTY INVESTIGATIONS

Effective 1 February 1975

*This revision explains additional terms, corrects organizational designations resulting from recent reorganization of the Army, and includes specific rules of misconduct. Local supplementation of this regulation is permitted, but is not required. If supplements are issued, CONUS Casualty Area Commands and Oversea Commands will furnish one copy to HQDA (DAAG-CA-D) WASH DC 20314; other commands will furnish one copy of each to the next higher headquarters.*

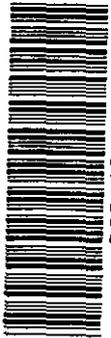
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\*This regulation supersedes AR 600-3, 30 August 1973.

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## CHAPTER 1

### GENERAL

**1-1. Purpose.** This regulation establishes policy and procedures for investigating the circumstances under which the disease, injury, or death of a member was incurred, and provides principles and considerations in determining line of duty (LD) status.

**1-2. Applicability.** This regulation applies to—

*a.* Army personnel on active duty.

*b.* Members of ARNGUS in a federalized status or while attending a service school and members of Army Reserve on active duty for training (ADT), inactive duty training (IDT), initial active duty for training (IADT), annual training (AT), and full-time training duty (FTTD) (10 USC 1204, 1207, 3722).

*Note.* Active duty trainees incurring an injury while on tours of active training or while traveling directly to or from active duty training are covered by this regulation. However, persons undergoing inactive duty training are covered only when the injury occurs during the actual inactive duty training period.

*c.* Members of the Corps of Cadets, US Military Academy and personnel assigned to the USMA.

*d.* Military personnel of other Armed Forces of the United States attached or assigned to an Army unit or being treated at an Army facility.

*e.* Persons who are either provisionally accepted for duty or are initially selected under the Military Selective Service Act of 1967 and are traveling to or from, or are present at, a place for final acceptance or entry on active duty with the Army.

**1-3. Importance of LD actions.** LD determinations have far-reaching implications not only for the individual, but also for the member's survivors in case of death. In the event of

injury or disease, the determination is especially important to the member because it can establish whether the member is entitled to disability compensation. In death cases, LD information is used by the Veterans Administration (VA) in determining the entitlement of survivors of the deceased to certain benefits. Specifically, a complete report is essential to support the following determinations:

*a.* Time lost under title 10 USC section 972 and paragraph 2-3, AR 635-200 and forfeiture of pay under title 37 USC, section 802; and rule 3, table 1-3-2, DODPM.

*b.* Entitlement to benefits (e.g., physical disability retirement) under statutes administered by the Secretary of the Army.

*c.* The individual's entitlements to benefits under statutes administered by the Veterans Administration and other Government agencies. The determinations made under this regulation are not in themselves conclusive as to the status of the individual concerned under statutes conferring benefits not administered by the Secretary of the Army. However, the Secretary of the Army furnishes the information required to make a determination to other agencies concerned.

**1-4. Explanation of terms.** The following terms apply for the purposes of this regulation.

*a. Injury.* The definition in AR 310-25 applies. (A detailed listing of injuries may be found in Volume I, Eighth Revision, International Classification of Diseases, adapted for use in the United States (ICDA-8), diagnostic codes 800-999.9. Copies are available at the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.)

*b. Disease.* If classification of a condition other than injury is required for LD determination, conditions not defined or classified as injuries are diseases. (A detailed listing of these conditions may be found in ICDA-8, diagnostic codes 000-796.9.)

*c. Presumptive line of duty determination.* A determination of line of duty status concerning an injury, disease, or death incurred under such circumstances as to permit an inference that it was incurred in the line of duty. This presumption does not apply when there is evidence to the contrary that would warrant an informal or formal investigation under paragraph 3-5.

*d. Informal line of duty investigation.* An informal investigation consists of the gathering of enough evidence by the individual's unit commander and the commander of the medical treatment facility (or attending physician or patient administrator concerned) so that a line of duty determination can be made by the appropriate authorities (para 1-5). The completion of an informal LD investigation consists of a completed DA Form 2173 (Statement of Medical Examination and Duty Status) (fig. 3-1) and attached documents (if necessary).

*e. Formal line of duty investigation.* A formal investigation is a detailed investigation, ordered by a special court-martial (SPCM) or higher authority, or demanded by the individual(s) affected by the LD finding, to ascertain the facts surrounding the death, injury, or disease of the member. This investigation consists of a completed DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status) (fig. 3-4) to which is appended documents (see para 3-8) necessary to support the findings and/or provide a complete investigation.

*f. In line of duty.* A finding or determination for an injury or disease incurred, contracted, or aggravated on active duty or while engaged in authorized training in an active or Reserve duty status, or during authorized absence, and not proximately caused by intentional misconduct or willful neglect of the member.

*g. Not in line of duty—not due to own mis-*

*conduct (NLD-NDOM).* A finding for an injury or disease which was contracted or incurred while neither on active duty nor engaged in authorized training in an active or Reserve duty status and was not aggravated by service (EPTS) or was incurred or contracted during a period of unauthorized absence, but was not proximately caused by the intentional misconduct or willful neglect of the member.

*h. Not in line of duty—due to own misconduct (NLD-DOM).* A finding for an injury or disease which was not in line of duty and was the result of the member's intentional misconduct or willful neglect.

*i. Existed prior to service (EPTS).* A term added to a medical diagnosis to signify that there is clear and unmistakable evidence that the disease or injury, or underlying condition producing the disease or injury, existed prior to the individual's entry into military service or was incurred between periods of active service. Included in this category are diseases of a chronic nature and those diseases with an incubation period which clearly precludes a finding that the inception of the disease occurred during inactive duty training, short tours of active duty, or active duty for training.

*j. Finding.* For the purposes of this regulation, the words "finding" and "determination" are synonymous and consist of the findings discussed in *f*, *g*, and *h* above.

*k. Incapacitation.* A condition determined by proper medical authorities wherein the member is incapable, for a continuous period in excess of 24 hours, of performing assigned duties.

*l. CONUS casualty area commander.* The commander assigned responsibility for the area in which the casualty occurs in CONUS. For areas of responsibility, see appendix B, AR 600-10.

*m. Simple negligence.* The omission of that care which a man of ordinary prudence usually takes; that is, the failure to exercise the care that a reasonable person of ordinary prudence would exercise in the same or a similar situation. (An injury or disease attributable solely to the occurrence of simple negligence is incurred within the line of duty, unless incurred

or contracted during a period of unauthorized absence or is EPTS.)

*n. Willful neglect.* Neglect manifested by the conscious and intentional omission of the proper care under the circumstances. The failure to perform a manifest duty in reckless disregard of the consequences as they may affect life or property is presumptive of willfulness (see para 2-4a). (The term "duty" as used herein is broader than military duty and encompasses those duties which an individual, under the attendant circumstances, may owe to himself or to society at large.)

*o. Intentional misconduct.* Any intentional wrongful or improper conduct. The requisite intent may be expressed or implied (see para 2-4a). Misconduct does not necessarily involve the commission of an offense under the Uniform Code of Military Justice nor does it refer to improper conduct which is not the proximate cause of the injury or disease. Thus, a member may be AWOL, which is an act of misconduct, but that fact does not constitute misconduct for line of duty purposes if his injury is due to the act of another person.

*p. Proximate cause.* The connecting relationship between an act of a member and a resulting disease or injury. (It means a moving or direct cause, as distinguished from a mere contributing cause.) As a general rule, it must appear that under the circumstances it could reasonably have been anticipated by the member that his injury or disease might result from his course of conduct.

*q. Substantial evidence.* Such relevant information as a reasonable mind can accept as adequate to support a conclusion. It is more than a trace of evidence, but it need not be such evidence as would convince all men of the conclusion.

**1-5. Authorities, powers, functions, duties, and responsibilities.** *a.* The Secretary of the Army, or his designee, unless otherwise specified in this regulation, reserves all powers, functions, and duties incident to LD determinations. The authority conferred by the provisions of this regulation is permissive and shall not preclude

referral of any LD determination to the Secretary of the Army for consideration and final determination.

*b.* The Adjutant General acts on behalf of the Secretary of the Army for all final LD determinations, including appeal actions, referred to Headquarters, Department of the Army. The original and one copy of all LD investigations involving death cases will be forwarded to The Adjutant General for final action.

*c.* The LD appointing authority (formal investigations only), normally the special court-martial authority for the unit to which the individual is assigned or attached at the time the incident occurred, is responsible for conducting the investigation. In the event the incident occurs while the individual is away from his unit of assignment (e.g., on leave, AWOL, intransit) the nearest Army unit with special court-martial authority is responsible for conducting the investigation.

*d.* The reviewing authority is that authority who reviews LD investigations prior to final approval. He is normally the general court-martial authority for the unit responsible for conducting the investigation.

*e.* In addition to The Adjutant General, the following authorities are authorized to take final approving action in the name of the Secretary of the Army on LD investigations or determinations coming within their purview.

(1) *Commander of the medical treatment facility (MTF), or his authorized representative (attending physician or patient administrator).* The hospital commanders will implement necessary procedures to insure prompt completion of Section I, DA Form 2173 when the form is required. The MTF commander is also responsible for determinations involving incapacitation from duty in excess of 24 hours as a result of the intemperate use of alcohol or other drugs (para 2-5); diseases, and certain injuries (para 3-5a) not related to misconduct, neglect or AWOL, and EPTS conditions.

(2) *Commanders with special court-martial authority.* For informal LD investigations

concerning injuries or disease from which no permanent physical disability will result, and other informal investigations when both the MTF commander or authorized representative and the member's unit commander agree on the determination of "In Line of Duty."

(3) *Commanders with general court-martial authority.* For informal investigation (except death cases) not finalized by lower authorities.

(4) *Superintendent, US Military Academy.* For LD investigations concerning USMA cadets and personnel assigned to the USMA.

(5) *Chief, National Guard Bureau.* For LD investigations concerning ARNGUS personnel other than those in a federalized status or those attending Army service schools.

(6) *CONUS casualty area commanders with general court-martial (GCM) authority.* For LD investigations concerning US Army personnel for incidents which occur within their area of jurisdiction, which are not finalized by approving authorities noted above. For incidents occurring within a CONUS casualty area in which the commander does not have GCM authority, the line of duty investigation will be forwarded to the installation having GCM authority for that CONUS casualty area commander.

(7) *Major oversea commanders.* For the purpose of this regulation, major oversea commanders are CINCUSAREUR, USA Support Command, Hawaii, USARJ, COMUSMAC-THAI, 172d Inf Bde (AK), Eighth US Army, and 193d Bde (CZ). For LD investigations concerning US Army personnel for incidents which occur within their area of jurisdiction, which are not finalized by approving authorities listed in (1) through (5) above. Major oversea commanders are authorized to delegate final ap-

proving authority on an area support basis to commanders in the grade of major general, or higher, with GCM authority.

f. Each individual involved in LD actions is responsible for the prompt and accurate accomplishment of his portion of required actions. Reviewing and approving authorities will establish necessary controls to insure prompt processing of actions required.

g. If an investigation is necessary, the commanders listed in e(6) and (7) above are responsible for designating a unit to conduct an LD investigation on an individual who is assigned outside the area and who incurs an injury, contracts a disease, or dies within their area of jurisdiction. In those instances where the member is intransit, Section II, DA Form 2173 should be completed by the installation commander nearest the incident, with special court-martial authority, based upon information received from his losing and gaining units.

h. The LD appointing authority is responsible for insuring that morning report entries concerning these determinations are accomplished.

i. The investigating officer is responsible for investigating the circumstances, assimilating and evaluating the evidence, making LD findings, and completion of the LD Report of Investigation (DD Form 261) surrounding a disease, injury, or death. The investigating officer must be a disinterested, experienced commissioned officer, senior to the person subject to the investigation, and designated by the appointing authority.

**1-6. Reports control exemption.** Reports required by this regulation are exempt from reports control under paragraph 7-2, AR 335-15.

## CHAPTER 2

### CONTROLLING FACTORS IN LD DETERMINATIONS

---

**2-1. General.** This chapter prescribes basic rules to be considered when determining whether the disease or injury of an individual was incurred in LD. Appendix C provides the rules by which an LD determination is made.

**2-2. Line of duty determinations.** *a.* There are three authorized determinations or findings.

(1) In line of duty (LD).

(2) Not in line of duty—not due to own misconduct (NLD-NDOM).

(3) Not in line of duty—due to own misconduct (NLD-DOM).

*b.* An LD determination is not required and will not be made on LD investigations pertaining to deaths.

**2-3. Basic considerations.** *a.* An injury or disease will be determined to have been incurred in line of duty and not because of the member's misconduct unless there is substantial evidence that the injury or disease was:

(1) Proximately caused by the intentional misconduct or willful neglect of the member.

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

(3) Incurred or contracted while neither on active duty or engaged in authorized training in an active or Reserve duty status (EPTS) and was not aggravated by the service.

*b.* LD and misconduct determinations are two separate determinations. A person whose disease, injury, or death occurred while in a desertion status or absent without authority must be held "not in line of duty." The proximate cause of the disease or injury is determinative of the misconduct status, whereas the LD determination is controlled by the actual

status of the person at the time of his misconduct. For example, a person could be injured while absent without authority. This would be "not in line of duty," but unless the proximate cause of his injury was misconduct, such as gross negligence, aggression in an affray, etc., the finding must be "not in line of duty—not due to own misconduct."

*c.* On any cases involving a determination of "Not in line of duty—due to own misconduct," (except as provided for in para 2-5*d*) a statement (SF 544, Clinical Record—Statement of Patient's Treatment, or other appropriate form) indicating the period of incapacitation attributed to the injury or disease which resulted in the unfavorable LD finding, will be obtained from the MTF and attached to the report.

*d.* LD determinations are wholly administrative, and therefore nonpunitive in nature. Adverse LD determinations may not be employed as a means of imposing discipline or punishment.

**2-4. Intentional misconduct or willful neglect.**

*a.* Misconduct for LD purposes must be intentional; however, intent may be expressed or implied. Negligence (i.e., neglect) to constitute misconduct within the purview of this regulation must be willful; however, the willfulness likewise may be expressed or implied. Negligence so gross as to evidence a reckless disregard of the consequences as they may affect life or property is presumptive of willfulness. Simple negligence is not misconduct for line of duty purposes.

*b.* The presence of misconduct does not of itself fix misconduct as the producing cause of the injury or disease. A finding that a disease

or injury resulted from misconduct is proper and sustainable only when it has been established by substantial evidence that misconduct was the proximate cause thereof. When misconduct is only a contributing cause, as opposed to proximate cause, the disease or injury should not be determined to have resulted from misconduct.

#### 2-5. Intemperate use of alcohol or other drugs.

*a.* Any disease or injury resulting in incapacitation directly attributed to the intentional abuse of alcohol or other drugs is regarded as "not in line of duty—due to misconduct." The development of an organic disease, which may be a secondary result of the abuse of alcohol or other drugs, does not constitute intentional misconduct or willful neglect within the meaning of 10 USC 1207, and therefore, would be considered as "in line of duty." Examples of such diseases are Laennec's cirrhosis, fatty metamorphosis of the liver, chronic brain syndrome, and subacute bacterial endocarditis with subsequent valvular heart disease secondary to infection acquired through intravenous injection of abusable drugs.

*b.* Drinking, drunkenness, and alcoholism by themselves are not subjects for LD investigations and more properly fall within the purview of punitive measures or other administrative actions. Alcoholism generally is defined as the morbid or pathological effects of excessive indulgence in alcoholic beverages. Hence, the term is generic, covering one or more of the effects of abuse of alcohol. The term "other drugs" includes cannabis, "narcotics" and "dangerous drugs." "Narcotics" refers to those habit forming drugs such as cocaine, and opium and its derivatives which include morphine and heroin, and isonipecaine and its derivatives. The term "dangerous drugs" means those non-narcotic drugs that are habit-forming or have a potential for abuse because of their stimulant, depressant, or hallucinogenic effect—such as amphetamine, barbituric acid, lysergic acid, lysergic acid diethylamide (LSD), or dimethyltryptamine (DMT) or any of their salts or derivatives. The "other drug" category also includes those drugs prescribed by a qualified

civilian or military authority for specific medical treatment, or drugs purchased through commercial sources (aspirin, cough/cold medicine) which do not normally require qualified professional supervision. The term "abuse" as it applies to "other drugs" means either illegal or excessive and improper use. The term "abuse" as it applies to alcohol consumption refers to irresponsible, excessive, or improper use. This includes, but is not limited to the amount, type, and relative intoxicating effect of the alcohol used; the period of time over which it was used; and the physical condition of the user.

*c.* That portion of the hospitalization during which a member is physically incapacitated through an acute or transient disease or injury (incurred through misconduct) which occurred as a result of the abuse of alcohol or other drugs, provided that it is for a continuous period in excess of 24 hours, will be considered "Not in line of duty—due to own misconduct." The remainder of the period of hospitalization, treatment, or rehabilitation will be considered as administrative absence from duty not requiring an LD finding. Periods of hospitalization of less than 24 hours for abuse of alcohol or other drugs do not require an LD determination.

*d.* To insure that medical data are maintained in confidence, the following procedures apply to cases where the individual is hospitalized as a result of incapacitation from duty, as outlined in *c* above, because of the abuse of alcohol or other drugs. Where incapacitation does not exist, an LD determination is not appropriate.

(1) Upon release of the individual from the MTF, the MTF commander or his designated representative will inform the individual concerned and his unit commander, by DF, of the line of duty finding concerning this hospitalization. To preclude unauthorized access to this information, the DF will be routed to the commander and individual concerned in sealed envelopes. Suggested format of this DF is shown at figure 3-3.

(2) This procedure does not preclude the necessity for completing and forwarding a DA

Form 2173 or DD Form 261 by medical, company, and other administrative personnel on cases concerning—

(a) Injuries incurred as a result of or while under the influence of alcohol or other drugs.

(b) Personnel who wish to appeal the initial LD finding made by use of the DF shown in figure 3-3. (In these instances, DA Form 2173 will be prepared by the MTF when requested by the unit commander concerned.)

**2-6. Self-destruction.** *a.* When there is nothing to show whether death was caused by accidental or intentional self-destruction, substantial evidence of intentional self-destruction is required to overcome the presumption that accident rather than intentional self-destruction was the cause of death. The unintentional taking of one's own life through gross or simple negligence will be termed accidental self-destruction. When there is reasonable doubt whether death was caused by intentional self-destruction, determination will be made by inquest.

*b.* An investigation of intentional self-destruction will necessarily include a determination of whether the decedent was mentally sound at the time of the act. The question of sanity can only be resolved by a searching inquiry into the character, behavior, and personal relationships of the decedent. Although the mere fact of self-destruction is not alone sufficient to overcome the legal presumption that every person is sane and intends the natural and probable consequences of his acts, any affirmative evidence that the member was so mentally unsound as to be unable to refrain from the act overcomes the presumption. Where the evidence does not adequately indicate a motive for self-destruction, a determination of accidental self-destruction will be made.

*c.* If the decedent is determined to be mentally unsound, the investigation should be expanded to determine whether his mental unsoundness existed prior to service, or was aggravated by service, or was due to his own misconduct.

*d.* In cases of self-destruction or attempted

self-destruction during absence without authority, mental soundness at the beginning of the absence without authority must be determined in addition to mental soundness at the time of injury or death.

*e.* An injury or disease intentionally self-inflicted, or ill effect resulting from attempted self-destruction (to include attempts by use of poison or pills), when mental unsoundness did not exist at the time of the act or omission, should be considered as having resulted from misconduct.

**2-7. Unauthorized absence.** *a.* Any injury or disease incurred while the member is in a period of unauthorized absence is incurred not in line of duty unless the individual was mentally unsound at the inception of unauthorized absence. If there is no further misconduct shown other than the absence without authority, the correct finding is "Not In Line Of Duty—Not Due To Own Misconduct." In order to establish that an individual was in a period of unauthorized absence for LD purposes, it must be shown that he voluntarily absented himself from his unit or organization or other place of duty without proper authority, or was absent from a scheduled duty or restriction at the time the injury or disease was incurred.

*b.* When there is a requirement that an individual be present at a specific place and time, such a requirement establishes an administrative restriction for LD purposes. In order to corroborate this restriction, the pertinent part of the directive establishing the requirement should be extracted and attached to the report of investigation.

*c.* If the driver of a Government vehicle on an authorized trip is injured during an unjustified deviation from his assigned route, he should be considered absent without authority for LD purposes.

*d.* The determination of the member's immediate commander (company equivalent unit or higher level) that at the time of the injury, disease, or death, the member was present for duty, absent with authority, or absent without authority, is final, and *per se* constitutes sub-

stantial evidence of the member's status at the time of the injury, disease, or death, unless shown to be manifestly erroneous by clear and convincing evidence.

e. Absences which are initially considered to be without authority, if excused by the proper authority pursuant to AR 630-10, will be deemed to be absences with authority.

f. If a member has been granted leave or special pass, he will not be considered to be in a period of unauthorized absence merely because of failure to "sign out" upon departure on authorized leave or pass.

2-8. **Psychoses.** a. Schizophrenic and manic depressive reactions and other psychoses of a similar nature are characterized by a tendency toward chronicity with remissions and exacerbations. Disorganization occurring in an unfamiliar environment may at times simulate illness of recent origin when in fact the process has existed unrecognized for a considerable period of time. Careful differentiation should be made between acute psychotic reactions of recent origin and exacerbations of chronic psychosis. Ordinarily, the following will be considered to be "In Line Of Duty":

(1) Psychoses in individuals in whom evidence of the disorder in question did not manifest itself prior to entry into service or did not come to the attention of command or medical authority within 120 days after entry into the military service.

(2) Cases where evidence exists that a pre-existing condition was aggravated by unusual stress in the service.

b. Those conditions listed in section V (diagnostic codes 290-299), ICDA-8 are considered psychoses.

2-9. **Psychoneurotic disorders** a. Unhealthy reactions to situations and emotions are not necessarily psychoneurotic and can be seen in individuals who have no psychiatric disease. Psychoneuroses are illnesses characterized primarily by internalized conflicts which may be quite evident or controlled by various psychological defense mechanisms. These illnesses re-

sult from the exclusion from consciousness of powerful emotional changes usually attached to childhood experiences. Symptoms appear with or without stimulations from external situations. In the military setting, apparent psychoneurotic symptoms are often seen in individuals with a basic personality defect and disappear with the removal of situational pressures. These individuals have character and behavior disorders. Ordinarily the following will be considered to be "In Line Of Duty":

(1) Psychoneurotic reactions occurring after entry into military service of an individual in whom no evidence of the actual disorder in question existed prior to entry into service.

(2) Those occasional cases where there is definite evidence to show that unusual stress or prolonged hazardous duty aggravated an individual's psychoneurosis which existed prior to entry into service.

b. Those conditions listed in section V (diagnostic codes 300, 305, and 307), ICDA-8 are considered psychoneurotic disorders.

2-10. **Character and behavior disorders.** The conditions listed in section V (diagnostic codes 301.0 thru 302.9), ICDA-8 are considered to be due to basic personality defects and to have existed prior to the individual's entry on active duty. Therefore, regardless of the length of service of the individual, these conditions are always held to have been incurred "Not In Line Of Duty—Not Due To Own Misconduct."

2-11. **Venereal disease.** A line of duty determination is not required for venereal disease diagnosis with the exception that a determination of "Not In Line Of Duty—Not Due To Own Misconduct" will be made when the condition existed prior to military service and was not aggravated by military service.

2-12. **Pregnancies.** Pregnancy and associated diagnoses are exempt from LD determination, except that an induced abortion, and any complication or sequela thereof, that is not performed in accordance with local law, will be subject to a formal LD determination.

**2-13. Hernia.** *a.* Members on active duty who develop a hernia will be considered to have acquired the hernia in line of duty unless it was noted on Standard Form 88 at the time of entry into the service.

*b.* Members of the Reserve components on ADT, IDT, IADT, AT, or FTTD, will be considered to have acquired or aggravated the hernia in line of duty if there was no evidence of hernia at time of medical examination and there is evidence of accident or other circumstances occurring while on duty sufficient to cause the hernia or aggravation.

**2-14. Operations and treatment.** *a.* The line of duty determination for an operation or treatment of an injury or disease generally will be the same as that of the injury or disease for which the operation or treatment was instituted, except as noted in *b* below.

*b.* Any ill effect directly attributable to treatment, anesthetic, or operation will be considered:

(1) "In Line Of Duty" if the administration or performance of such treatment, anesthetic, or operation was not a criminal offense under Federal or State law and it was administered or performed by an authorized person of the medical service of a Government agency or by other properly licensed medical person.

(2) "Not In Line Of Duty—Not Due To Own Misconduct" if it was administered or performed during a period of unauthorized absence or if performed on a member of the Reserve components not on active duty for a disease which was contracted while he was engaged in ADT, IDT, IADT, AT, or FTTD.

**2-15. Proceeding directly to or from active duty or ADT.** In determining whether disability or death was the result of any injury incurred while proceeding directly to or directly from active duty or ADT, consideration will be given to the following:

*a.* Whether the member was authorized or required to perform such training; i.e., whether the member was complying with competent orders.

*b.* The hour on which the member began travel.

*c.* The time when the member was scheduled to arrive for duty, or when the member ceased to perform such duty.

*d.* The method of travel employed.

*e.* The time required to perform the travel.

*f.* The manner in which the travel was performed.

*g.* Whether the member was traveling by the most direct route.

*h.* The immediate cause of injury or death.

*i.* If death was due to disease, whether the disease existed prior to discharge or release and whether it was incurred on active duty or ADT or was aggravated by active duty or ADT.

**2-16. Injury or disease incurred while not on active duty or in training status.** *a.* A member of the Army will be presumed to have been in sound physical and mental condition upon entering active service or authorized ADT, IADT, AT, FTTD, or IDT. In order to overcome this presumption, it must be shown by substantial evidence that the injury, disease, or condition causing the injury or disease was sustained or contracted while the individual was neither on active duty nor engaged in ADT, IADT, AT, FTTD, or IDT. Manifestations of lesions or symptoms of chronic disease so close to the date of the patient's entry into active service that they could not have originated after such entry, or manifestations of disease within less than the minimum incubation period after the patient's entry into active service will be substantial evidence of inception prior to service.

*b.* It is further presumed that, even if the foregoing provision is overcome by such evidence, any additional disability or death resulting from the 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 sufficient to overcome the presumption of service aggravation.

*c.* Acute infections, such as pneumonia, active rheumatic fever (even though recurrent), acute pleurisy, acute ear disease; and sudden developments, like lung collapse, perforating ulcer, decompensating heart disease, or cerebral hemorrhage, occurring while in service, will be regarded as service incurred or service aggravated unless it can be clearly and unmistakably shown that there was no increase in severity during service.

*d.* Any physical condition having its inception in line of duty during one period of service or authorized training in any of the Armed Forces which recurs or is aggravated during a subsequent period of service or authorized training, regardless of the intervening time, should be determined to have recurred or have been aggravated in line of duty, provided the aggravated condition was not the result of misconduct or neglect.

## CHAPTER 3

### PROCESSING LD ACTIONS

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**3-1. Types of determinations and investigations.** *a.* Informal, formal, and presumptive LD investigations and/or determinations are authorized under this regulation.

*b.* The type of actions to be taken will depend upon the nature of the case as manifested by the availability of facts, legal interpretations, or by rules set forth in appropriate regulations, and the degree of investigation required to establish circumstances surrounding the death, injury, or disease. Usually a simple case may be resolved by an informal investigation or presumptive determination, whereas a complex case may require a formal investigation. See paragraph 3-5 for listing of LD action requirements.

**3-2. Informal investigation and presumptive determination.** LD finding may be determined informally, presumptively, or with a minimum of investigation. A presumptive determination can be made on cases listed in paragraph 3-5*a*, when the commander and medical officer concerned have no evidence of misconduct, neglect, or AWOL. The final determination of an informal investigation can result in a finding of In Line of Duty only, except on cases discussed in paragraph 2-5*d*(1), when DA Form 2496 (DF) is used. Informal investigations will be recorded on DA Form 2173 prepared by the MTF commander and unit commander and approved by the SPCM or higher authority concerned. When DA Form 2173 is used, only those documents needed to support the finding should be attached. Table 3-1 shows processing steps for an informal investigation.

**3-3. Formal investigation.** A formal investigation is a thorough investigation completed by an investigating officer appointed by a SPCM au-

thority. Formal determinations are documented by completion of DD Form 261 with appropriate attachments (para 3-8). Table 3-2 shows processing steps for a formal investigation.

**3-4. Nature of evidence to be considered.**

*a.* Statements of witnesses as well as documentary evidence will be considered. The weight given to any particular item of evidence rests in the sound judgment of the investigating officer.

*b.* Before a member, who is the subject of an LD investigation, is questioned by any person, civilian or military, who is acting in any official investigative capacity, he will be advised that he does not have to make any statement that is against his interest and that relates to the origin, incurrence, or aggravation of any injury or disease suffered by him. The member's statement, if any, will be recorded on DA Form 2823 (Witness Statement) and will reflect that the above warning was given. If the member also is suspected or accused of any offense under the Uniform Code of Military Justice, (e.g., AWOL, damage to military or civilian property, drunk driving, malingering, or negligent homicide), his statement will be recorded on DA Form 3881 (Rights Warning Procedures/Waiver Certificate). Before his statement is taken, he also will be advised of his rights under Article 31, Uniform Code of Military Justice, or the Fifth Amendment of the Constitution of the United States, as appropriate.

*c.* Statements by witnesses will be recorded on DA Form 2823. However, if a witness also is suggested or accused of an offense under the Uniform Code of Military Justice, or if he is also the subject of a LD investigation, the provisions of *b* above will apply as appropriate.

d. A copy of a statement taken in another investigation may be used as an exhibit to an LD investigation providing the conditions below are met. Such statements will be clearly identified as to type of investigation from which they were extracted and the source of the statement.

(1) The information contained in the statement must be material to the LD investigation.

(2) The individual being investigated must be permitted to examine the statement and allowed to refute any unfavorable testimony.

(3) The applicable provisions of *b* above were compiled with at the time the statement was taken. This requirement does not apply to statements made to persons who were not acting in an official capacity at the time the witness made the statement under consideration.

(4) Accident reports listed in AR 385-40, which are safeguarded information, may not be used as evidence or to obtain evidence in determining the misconduct or LD status of an individual.

e. Medical records should not be used as documentary evidence in completing LD reports of investigation. Information which is contained in the medical records can be obtained from the medical treatment facility commander or patient administrator, upon written request, when there is evidence to indicate that a medical condition warrants consideration. The information will be provided on Standard Form 544 (Clinical Record—Statement of Patient's Treatment) or other form as appropriate (e.g., autopsy protocol).

**3-5. Requirements for line of duty actions. a. Presumptive determination.** Unless the individual's commander or medical officer has evidence to the contrary (misconduct, AWOL, or willful neglect), the following will be presumed to have been incurred "In Line Of Duty," and will not require a LD investigation:

(1) Death due to natural causes.

(2) Injury or death which was the direct result of the performance of duty (except for *b*(3) below).

(3) Injury or death which was incurred while a passenger in an aircraft.

(4) A disease, unless it was the result of misconduct, occurred while absent without authority, or occurred under doubtful or peculiar circumstances.

(5) An injury which is only temporarily disabling and will not result in a future physical impairment.

(6) Injury which occurred while participating in military athletics or a military athletic program.

*Note.* Where any doubt exists on the above, a report of investigation will be completed.

*b. Informal investigation.* An informal investigation to determine line of duty status will be conducted when no absence without authority, misconduct, or willful neglect is involved, in the following cases:

(1) Injury or death which resulted from a motor vehicle accident (nonhostile or nonbattle only).

(2) Death which occurred while participating in military athletics or a military athletic program.

(3) Injury or death incurred while pilot or co-pilot of a military aircraft (nonhostile or nonbattle only).

(4) Injury or death occurring while traveling directly from extended active duty.

(5) Injury occurring to USAR member while performing ADT or IDT.

(6) Injury, disease, or death for which a presumptive determination is inappropriate and formal investigation is not required.

*c. Formal investigation.* A formal line of duty investigation will be completed in cases involving:

(1) Injury or death incurred while the member is absent without authority for 120 days or less and there is no evidence of mental unsoundness at inception of unauthorized absence. No investigation is required on cases involving unauthorized absence of more than 120 days unless there is evidence of mental unsoundness at inception of absence.

(2) Injury, disease, death, or medical condition apparently due to misconduct or willful neglect.

(3) Injury, disease, or death incurred under peculiar or doubtful circumstances.

(4) Injury or death involving the intemperate use of alcohol or other drugs.

(5) Self-inflicted injuries or self-destruction.

(6) Injury or death occurring while member was en route to final acceptance in the Army.

(7) Death occurring to USAR member while performing ADT or IDT or while traveling to or from such duty.

(8) Injury incurred while traveling directly to or from ADT.

(9) Injury, disease, or death of a member when his commander or medical officer has evidence which refutes the presumption of "In Line Of Duty" and an informal investigation is inadequate.

(10) An appeal of an unfavorable determination made concerning the intemperate use of alcohol or other drugs (d(1) below).

(11) Other cases when directed by special court martial or higher authority.

*d. Others.*

(1) The provisions of paragraph 2-5 apply to cases involving the intemperate use of alcohol or other drugs.

(2) The provisions of NGR 600-3 apply to injuries, disease, or deaths occurring to members of the Army National Guard while performing IDT or ADT.

(3) The provisions of AR 145-1 apply to injuries, diseases, or deaths occurring to members of the ROTC, to include applicants for membership in that Corps, while traveling directly to or from, or while at summer camp, field training, or while undergoing flight instruction.

(4) Death from a cause previously subject to a LD investigation requires no further investigation, unless the death was self-inflicted, or was due to misconduct, neglect, or was incurred while in an unauthorized absence status.

(5) In death cases, the Missing Persons

Board may be used for determining line of duty status.

(6) The completed Section I of DA Form 2173 prepared on a member of another branch of the armed services should be forwarded to the commander of the subject individual.

(7) An EPTS condition is usually determined by the physician during examination or treatment of the member. Medical records are appropriately annotated by the physician as to whether the condition existed prior to service, and *was* or *was not* aggravated by military service. If an LD determination is required, information from the medical records will be used to support the appropriate finding.

**3-6. Time limits for processing LD actions.** LD actions should be completed within the time limits indicated in tables 3-1 and 3-2. When an investigation or action concerning an investigation is not completed within the established time frames, a résumé will accompany the investigation. This résumé will outline the reasons for the delay and include a chronology of actions by date, from the time of the incident until the date the investigation is forwarded. Only the final approving and reviewing authorities are authorized to delegate authority to sign the résumé. In such cases, the approving authority may designate officers of the Adjutant General's Corps (Medical Services Corps for Hospitals), not below the grade of lieutenant colonel, to sign the résumé. *ADDITION (May '76)*

**3-7. Completion of DA Form 2173 (Statement of Medical Examination and Duty Status).** *a.* The medical treatment facility (MTF) commander, patient administrator, or attending medical officer will complete Section I of DA Form 2173 in quintuplicate and forward to the member's unit commander. This section will show the nature and extent of the injury or disease or, in the case of death, the presumptive medical cause of death. A DA Form 2173 must be initiated whenever an informal or formal investigation is required (para 3-5).

*b.* The unit commander will complete Section II of DA Form 2173 to show duty status at the time of the incident and circumstances sur-

rounding the incident. If the individual was AWOL at the time of death, injury, or onset of disease, the following information will be included in the remarks section of DA Form 2173.

- (1) Normal duty assignment.
- (2) The scheduled hours of such duty (including length of duty week).
- (3) If absent because of breaking restriction, the date and hour the individual was notified of the restriction.
- (4) If the individual's pass privileges were revoked, when and why they were revoked and for how long.
- (5) If reported absent for overstaying leave or pass, the hours and effective dates of the leave or pass and the time that the period of unauthorized absence began.
- (6) If reported absent because of deviating from an authorized route, the authorized route and the deviation will be fully explained.
- (7) When there is a requirement that an individual be present at a specific location between specified hours, the pertinent part of the directive establishing the requirement will be extracted and attached to DA Form 2173.

*c.* If the DA Form 2173 is to be utilized in completing an informal investigation, the "thru" and "to" addressees must approve and/or authenticate findings on the reverse of the form.

*d.* A completed DA Form 2173 is shown in figure 3-1.

**3-8. Completion of DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status).** *a.* The investigating officer will prepare his report on DD Form 261. The report will be prepared in quintuplicate.

*b.* The report will be unclassified whenever possible. Classified security information will not be attached unless it is material to the investigation.

*c.* The following information will be included in item 9g of DD Form 261 whenever appropriate:

- (1) Summary of circumstances and basis for determination if made.
- (2) Clarification of any discrepancy in the date and place of injury or death or in the evidence as to the duty status of the individual.
- (3) Reason(s) for failure to interview person whose LD status is being investigated or any witnesses whose testimony may have been material.
- (4) Comments of the investigating officer concerning the credibility of statements of witnesses.
- (5) List of inclosures.

*d.* Documentary exhibits, as appropriate, will be attached to DD Form 261 in the following order (Exhibit A, B, etc.):

- (1) Instrument appointing the investigating officer.
- (2) DA Form 2173 (Statement of Medical Examination and Duty Status completed through Section II).
- (3) Copy of orders to active duty, or periodic advance training schedule for guardsmen/reservists on active duty or Reserve duty training.
- (4) Report of autopsy findings to include blood alcohol results and toxicology studies, if completed.
- (5) Report of inquest.
- (6) Statements of witnesses and individual being investigated.
- (7) Photographs which are relevant to the case (highway markings, terrain, etc.).
- (8) Copy of letter of sympathy written to the next of kin in death cases.
- (9) Statement from medical authorities (Standard Form 544 or other appropriate form), concerning period of hospitalization caused by an injury or disease for which an unfavorable LD finding is being made. This form should be used only when the information in Section I, DA Form 2173 is inadequate for the purpose of completing a formal LD investigation.

(10) Copy of any report conducted by

S/S  
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8

criminal investigators (only if necessary to provide a complete investigation).

(11) Any other exhibits material to the case.

e. A completed DD Form 261 is shown in figure 3-4.

**3-9. Notification of completed actions.** Disposition of reports of investigation will be accomplished as indicated in tables 3-1 and 3-2.

a. In death cases, no notification is necessary.

b. In cases involving injury or disease, the final approving authority will notify the following individuals, as appropriate, of the results of the investigation:

(1) The individual who is the subject of a formal LD investigation will be furnished a copy of the approved report of investigation (less résumé). The report will be mailed to the commander of the station or unit where the member was last known to be assigned with a request that it be forwarded if he has been transferred. It is incumbent upon the individual's station or unit commander to insure that the individual concerned personally receipts for the delivered LD investigation. The signed receipt will be filed with LD investigations maintained by the unit. Exhibits containing classified information and CID reports will be withdrawn by the approving authority from the member's copy before it is forwarded. The fact that member's copy has been furnished him will be noted on the DD Form 261 as a part of the approving authorities action. The member's copy will be forwarded by letter of transmittal which will inform him:

(a) Of his right to appeal an adverse finding as provided in paragraph 3-10.

(b) If certain documents have been withdrawn, why it was done, and who is the releasing authority. The releasing authority for CID reports is the Commander, US Army Criminal Investigating Command, Washington, D.C. 20315.

(2) The Chief, National Guard Bureau will be notified of the results of the investigation in all cases involving ARNGUS personnel in which the Chief, National Guard Bureau is not the final approving authority.

(3) A copy of the completed DA Form 2173 or DD Form 261 (without Exhibits), will be furnished the appropriate career branch (see AR 640-10 for addresses) for all officers and warrant officers on active duty for more than 30 days when the final determination is "Not In Line Of Duty."

(4) In the case of USAR personnel who have returned home after completion of ADT, IADT, AT, FTTD or IDT, notification should be made to the individual through the Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Blvd, St Louis, MO 63132.

(5) Notification letters returned to the final approving authority undelivered will be forwarded by letter of transmittal as indicated below, citing this paragraph, and requesting that the notification letter, including the individual's copy of line of duty report of investigation, be transmitted to him:

(a) *For officers.* HQDA (DAPC-PAR-R), Alexandria, VA 22332.

(b) *For enlisted personnel.* Commander, US Army Enlisted Records Center, Ft Benjamin Harrison, IN 46249.

**3-10. Appeals.** a. The individual may appeal, in writing, within 45 days after receipt of notification of the finding. Appeals not submitted within this time limit require a detailed explanation by the individual of the reason for the delay.

(1) If the individual is assigned within the geographic area of responsibility of the final approving authority, the appeal will be forwarded through channels to the final approving authority. If the final approving authority determines that there is no basis for a change in the finding, he will so indicate by indorsement and forward the appeal to HQDA (DAAG-CA-D) WASH, DC 20314.

(2) If the subject is no longer in the geographic area of responsibility of the final approving authority, he may submit his appeal directly to HQDA (DAAG-CA-D) WASH, DC 20314.

b. Any change in the finding of the investiga-

tion based on an appeal requires the same notification action as the original investigation.

**3-11. Revision or correction of LD findings.** The Secretary of the Army, or The Adjutant General acting for him, may at any time change a finding made under this regulation to reflect the correct conclusion based upon the facts. When a determination is changed after final action has been taken to award statutory benefits administered by the Army (such as entitlement to disability retired pay), the changed finding does not necessarily change the statutory award. Final statutory determinations may be changed only upon discovery of fraud, mani-

fest error, mathematical miscalculation, or substantial new evidence which could not have been discovered with due diligence at the time of the investigation.

**3-12. Processing cases for physical disability separation.** The agencies involved in processing cases for physical disability separation are not bound by line of duty determinations previously made. When the Physical Evaluation Board (PEB) or the US Army Physical Review Council (USAPRC) believes that a prior LD determination may be incorrect for any reason, a request for review of the determination should be submitted to The Adjutant General.

TABLE 3-1

## PROCESSING FORMAL INVESTIGATIONS (see para 3-2 and 3-7)

Line	This person	will perform these actions	within <sup>1</sup>
1	MTF commander <sup>2</sup>	Complete Section I, DA Form 2173, in five copies. Forward the original and four copies to the individual's unit commander. <sup>3, 4, 5</sup>	3 working days after incident or initial treatment.
2	individual's unit commander	Request DA Form 2173 from MTF, if not previously received. Complete Section II, DA Form 2173, attach supporting documentation, and forward original and three copies to the officer having special court-martial authority for units in area in which the incident occurred.	9 days after incident
3	special court-martial authority	Review the investigation for completeness and required documentation. (1) If approved, annotate form as follows (preceded by official designation of headquarters and date, and followed by signature and signature block): (a) For disease or injury (when special court-martial authority is final approving authority). "Reviewed for completeness. In Line of Duty." <sup>4</sup> Retain one copy, forward original to OMPF <sup>5</sup> and one copy each to persons listed in lines 2 and 4. <sup>3, 4</sup> (b) For disease or injury (when special court-martial authority is not final approving authority). "Reviewed for completeness, In Line of Duty," followed by appropriate command line. Forward original and two copies to the final approving authority. (c) For deaths: "Reviewed for completeness. No determination made," followed by appropriate command line. Forward original and two copies to the final approving authority. (2) If disapproved, direct that a formal investigation be conducted.	14 days after incident
4	final approving authority	Review the investigation for completeness and required documentation. (1) If approved, annotate as in line 3(1)(a) or (c) above. (a) For disease or injury. Retain one copy, forward original to OMPF and forward one copy to member's unit commander. <sup>3, 5, 6</sup> (b) For deaths. Retain one copy and forward original and one copy through casualty reporting channels to HQDA (DAAG-CA-D) WASH DC 20314. (2) If disapproved, return to the special court-martial authority and direct that a formal investigation be conducted.	20 days after incident.

## Notes.

<sup>1</sup> If investigation extends beyond time limits, see paragraph 3-6.<sup>2</sup> Commander having physical or administrative responsibility for medical facility in which individual is treated or pronounced dead.<sup>3</sup> An extra copy of DA Form 2173 will be prepared for National Guard personnel attending service school under the jurisdiction of the Army or performing ADT under REP-68. This copy will be filed in the individual's field MPRJ which is returned to the State Adjutant General at the end of service school or ADT.<sup>4</sup> For Reserve personnel who incur an injury during IDT and are treated by a civilian physician, DA Form 2173 should be completed by the civilian physician and the unit commander.<sup>5</sup> If incident occurred in an area other than that to which the individual is assigned, or while the member was intransit between units of

assignment, one copy of the completed Section I, DA Form 2178 should be forwarded to the installation commander having special court-martial jurisdiction for units in the area of the MTF.

\* Followed by command line of BY AUTHORITY OF THE SECRETARY OF THE ARMY (AR 600-33). See figure 3-2 for example.

For officer: HQDA (DAPC-PAR-R), Alexandria, VA 22332

For enlisted: Commander, USA Enlisted Records Center, ATTN: AGPE, Ft Benjamin Harrison, IN 46249

USAR personnel: Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132

ROTC cadets: In accordance with AR 145-1

\* Accomplish notification actions required by paragraph 3-9.

\* An approved copy of LD investigation should be returned to the initiating MTF on all injuries concerning National Guard and Reserve members on active duty for a period of 30 days or less, or inactive duty for training, when such personnel are in a patient status.

TABLE 3-2

## PROCESSING FORMAL INVESTIGATIONS (see para 3-2 and 3-7)

Line	This person	will perform these actions	within <sup>1</sup>
1	MTF commander <sup>2</sup>	Complete Section I, DA Form 2173, in five copies. Forward the original and four copies to the individual's unit commander. <sup>3, 4, 5</sup>	3 working days after incident or initial treatment.
2	individual's unit commander	Request DA Form 2173 from MTF if not previously received. Complete Section II, DA Form 2173, attach supporting documentation, and forward the original and three copies to the LD appointing authority.	9 days after incident
3	appointing authority (specm authority)	<del>Appoint on orders</del> a disinterested commissioned officer to conduct the investigation. <sup>6</sup> <i>A DF or letter will be used to appoint</i> (e M J)	12 days after incident
4	investigating officer	Conduct a formal investigation as outlined in this regulation, make a report on DD Form 261, and forward original and three copies to the appointing authority.	30 days after incident
5	appointing authority	Review the investigation, complete the block titled "Action by the Appointing Authority" on DD Form 261. Retain one copy of the report and forward the original and two copies to reviewing authority. <sup>9, 10</sup>	37 days after incident
6	reviewing authority	Review the investigation, complete the block titled "Action by the Reviewing Authority" <sup>10, 11</sup> on DD Form 261, and forward the original and two copies to final approving authority.	44 days after incident
7	final approving authority	<p>a. Review the investigation and enter the official designation of the headquarters, the date, approval or disapproval of the findings (see below), signature, and signature block.<sup>11</sup></p> <p>(1) For disease or injury: One of the following, as appropriate:</p> <p>(a) Approved.  BY AUTHORITY OF THE SECRETARY OF THE ARMY (AR 600-33);</p> <p>(b) The findings of the reviewing authority are disapproved and the following substituted therefor: _____  Reasons for disapproval are: _____  BY AUTHORITY OF THE SECRETARY OF THE ARMY (AR 600-33)<sup>10</sup></p> <p>(2) For death cases:  "Reviewed for completeness. No determination made."  BY AUTHORITY OF THE SECRETARY OF THE ARMY (AR 600-33);</p> <p>b. Distribution.</p> <p>(1) Death—  Retain one copy and forward the original and one copy of the report to HQDA (DAAG-CA-D) WASH, DC 20314.<sup>7</sup></p> <p>(2) Disease or injury—  Retain one copy and forward original of report to the custodian of the individual's OMPF<sup>8</sup> and one copy to the individual under investigation.<sup>7, 12, 13, 14</sup></p>	50 days after incident

**Notes.**

- <sup>1</sup> If investigation extends beyond time limits, see paragraph 8-6.
- <sup>2</sup> Commander having physical or administrative responsibility for medical facility in which individual is treated or pronounced dead.
- <sup>3</sup> An extra copy of DA Form 2173 will be prepared for National Guard personnel attending service school under the jurisdiction of the Army or performing ADT under REP-63. This copy will be filed in the individual's field MPRJ which is returned to the State Adjutant General at the end of service school or ADT.
- <sup>4</sup> For Reserve personnel who incur an injury during IDT and are treated by a civilian physician, DA Form 2173 should be completed by the civilian physician and the unit commander.
- <sup>5</sup> If incident occurred in an area other than that to which the individual is assigned, or while the member was intransit between units of assignment, one copy of the completed Section I, DA Form 2173 should be forwarded to the installation commander having special court-martial jurisdiction for units in the area of the MTF.
- <sup>6</sup> For officer: HQDA (DAPC-PAR-R), Alexandria, VA 22332  
For enlisted: Commander, USA Enlisted Records Center, ATTN: AGPE, Ft Benjamin Harrison, IN 46249  
USAR personnel: Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63182
- <sup>7</sup> ROTC cadets: In accordance with AR 145-1.
- <sup>8</sup> Accomplish notification actions required by paragraph 8-9.
- <sup>9</sup> The same officer should be appointed to investigate all injuries or deaths which occurred as a result of a single incident. Officers who are in a position to offer evidence in the case and individual's unit commander will not be appointed as the investigating officer. (The investigating officer may also be appointed to investigate a claim or possible future claim(s) in accordance with AR 27-20 if a separate claims investigation is required. The LD investigation will be in lieu of the investigation by a claims officer required by AR 27-20 if the injury or death of the person whose LD status is being investigated is the only basis for claim against the Government of other party or agency.)
- <sup>10</sup> If the individual was a National Guardsman performing duty under title 32, US Code section 503, 504, or 505, the appointing authority will forward the original and two copies of the report of investigation to the Adjutant General of the State from which the individual was ordered to duty rather than the reviewing authority (see NGR 600-3).
- <sup>11</sup> The appointing, reviewing, and final approving authorities may change a finding previously made. When a finding is changed, the reasons for that change will be indicated on the reverse of DD Form 261, if there is not enough room on the front.
- <sup>12</sup> If the same officer acts as reviewing authority and final approving authority, the entry "SAME AS FINAL APPROVING AUTHORITY" will be made in the block title "Action by Reviewing Authority."
- <sup>13</sup> CID reports will not be included in the copy sent to the individual.
- <sup>14</sup> If finding is NOT IN LINE OF DUTY, final approving authority must also take appeal action outlined in paragraph 8-10.
- <sup>15</sup> An approved copy of LD investigation should be returned to the initiating MTF on all injuries concerning National Guard and Reserve members on active duty for a period of 30 days or less, or inactive duty for training, when such personnel are in a patient status.

STATEMENT OF MEDICAL EXAMINATION AND DUTY STATUS			
For use of this form, see AR 600-33; the proponent agency is The Adjutant General's Office.			
THRU: (Include ZIP Code) Commander HQ Co, USA Ft Myer, VA 22211	TO: (Include ZIP Code) Commander US Army MDW Ft McNair, Wash DC 20319	FROM: (Include ZIP Code) Commander Rader Army Clinic Ft Myer, VA 22211	
1. NAME OF INDIVIDUAL EXAMINED (Last, First, and Middle Initial) Doe, John F.		2. SSN 378-54-5048	3. GRADE SFC (E7)
4. ORGANIZATION AND STATION HQ Co, USA, Ft Myer, VA 22211		5. ACCIDENT INFORMATION a. DATE 2 Jan 74 b. PLACE (City and State) Alexandria, Virginia	
<b>SECTION I - TO BE COMPLETED BY ATTENDING PHYSICIAN OR HOSPITAL PATIENT ADMINISTRATOR</b>			
6. INDIVIDUAL WAS <input type="checkbox"/> OUT PATIENT <input type="checkbox"/> ADMITTED <input checked="" type="checkbox"/> DEAD ON ARRIVAL		7. NAME OF HOSPITAL OR TREATMENT FACILITY <input type="checkbox"/> CIVILIAN <input checked="" type="checkbox"/> MILITARY Rader Army Clinic, Ft Myer, VA 22211	
8. HOUR AND DATE ADMITTED 0055, 2 Jan 74		9. HOUR AND DATE EXAMINED 0055, 2 Jan 74	
10. NATURE AND EXTENT OF <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> DISEASE <input checked="" type="checkbox"/> RESULTING IN DEATH (Explain) Fractured Skull			
11. MEDICAL OPINION: a. INDIVIDUAL <input checked="" type="checkbox"/> WAS <input type="checkbox"/> WAS NOT UNDER THE INFLUENCE OF <input checked="" type="checkbox"/> ALCOHOL <input type="checkbox"/> DRUGS (Specify): b. INDIVIDUAL <input checked="" type="checkbox"/> WAS <input type="checkbox"/> WAS NOT MENTALLY SOUND (Attach Psychiatric evaluation if appropriate). c. INJURY <input type="checkbox"/> IS <input checked="" type="checkbox"/> IS NOT LIKELY TO RESULT IN A CLAIM AGAINST THE GOVERNMENT FOR FUTURE MEDICAL CARE. d. INJURY <input checked="" type="checkbox"/> WAS <input type="checkbox"/> WAS NOT INCURRED IN LINE OF DUTY. BASIS FOR OPINION: Medical records and blood alcohol test.			
12. THE FOLLOWING DISABILITY MAY RESULT <input type="checkbox"/> TEMPORARY <input type="checkbox"/> PERMANENT PARTIAL <input checked="" type="checkbox"/> PERMANENT TOTAL		13. BLOOD ALCOHOL TEST MADE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	14. NO. OF MG ALCOHOL/100 ML BLOOD .04 mg/100 ml
15. DETAILS OF ACCIDENT OR HISTORY OF DISEASE (how, where, when) Patient was driver in an automobile involved in an accident on Duke Street in Alexandria, VA.			
16. DATE 4 Jan 74	17. TYPED OR PRINTED NAME OF ATTENDING PHYSICIAN OR PATIENT ADMINISTRATOR ISABELLE J. SAUNDERS Major, MSC	18. SIGNATURE <i>Isabelle J. Saunders</i>	
<b>SECTION II - TO BE COMPLETED BY UNIT COMMANDER OR UNIT ADVISER</b>			
19. DUTY STATUS <input type="checkbox"/> PRESENT FOR DUTY <input type="checkbox"/> ABSENT WITHOUT AUTHORITY <input checked="" type="checkbox"/> ABSENT WITH AUTHORITY: <input checked="" type="checkbox"/> ON PASS <input type="checkbox"/> ON LEAVE		20. HOUR AND DATE OF ABSENCE a. FROM 0001 hrs 30 Dec 73 b. TO 0055 hrs 2 Jan 74	
21. ABSENCE WITHOUT AUTHORITY MATERIALLY INTERFERED WITH THE PERFORMANCE OF MILITARY DUTY (Explain in Item 30 type of duty missed, hours of duty, and how it did or did not interfere with performance) <input type="checkbox"/> YES <input type="checkbox"/> NO NA			
22. INDIVIDUAL WAS ON <input checked="" type="checkbox"/> ACTIVE DUTY <input type="checkbox"/> ACTIVE DUTY FOR TRAINING <input type="checkbox"/> INACTIVE DUTY TRAINING		23. HOUR AND DATE TRAINING a. BEGAN NA b. ENDED	
24. RESERVIST DIED OF INJURIES RECEIVED PROCEEDING <input type="checkbox"/> DIRECTLY TO TRAINING <input type="checkbox"/> DIRECTLY FROM TRAINING			
25. MODE OF TRANSPORTATION NA	26. HOUR BEGINNING TRAVEL NA	27. DISTANCE INVOLVED NA	28. NORMAL TIME FOR TRAVEL NA
29. DUTY STATUS AT TIME OF DEATH IF DIFFERENT FROM TIME OF INJURY OR CONTRACTION OF DISEASE <input type="checkbox"/> PRESENT FOR DUTY <input type="checkbox"/> ABSENT WITH AUTHORITY <input type="checkbox"/> ABSENT WITHOUT AUTHORITY			
30. DETAILS OF ACCIDENT - REMARKS (If additional space is needed, continue on reverse) (Attach inclosures as necessary) SFC Doe was the driver of a POV, which was involved in an accident at 0030 hours, 2 Jan 74, with a car driven by Mr. James Jones, on Duke Street, Alexandria, VA. Mr. Jones made a left turn suddenly and without signalling, directly in front of SFC Doe's car who could not avoid striking Mr. Jones car. Mr. Jones was cited for a number of violations. Police report is attached.			
31. FORMAL LINE OF DUTY INVESTIGATION REQUIRED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		32. INJURY IS CONSIDERED TO HAVE BEEN INCURRED IN LINE OF DUTY (Not applicable on deaths) <input type="checkbox"/> YES <input type="checkbox"/> NO Death (no detm necessary)	
33. DATE 9 Jan 74	34. TYPE NAME AND GRADE OF UNIT COMMANDER OR UNIT ADVISER STEPHEN E. JUFERBOCK, CPT INF		35. SIGNATURE <i>Stephen E. Jufierbock</i>

DA FORM 1 OCT 72 2173

REPLACES DA FORM 2173, 1 JUNE 66, WHICH IS OBSOLETE.

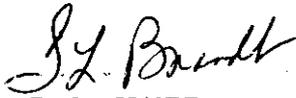
Figure 3-1

Doe, John F., SFC (E7), SSN 378-54-5048

HQ, Ft Myer, VA 22211 12 Jan 74

Reviewed for completeness. No determination made.

FOR THE COMMANDER:



T. L. BRANDT  
Major, AGC  
Adjutant

2 Incl

Commander, USA Military District of Washington, Washington, D. C. 20319 15 Jan 74

Reviewed for completeness. No Determination made.

BY AUTHORITY OF THE SECRETARY OF THE ARMY (AR 600-33):



P. J. POWERS  
LTJG, AGC  
Adjutant General

2 Incl  
nc

Figure 3-2

<b>DISPOSITION FORM</b>			
For use of this form, see AR 340-13; the proponent agency is The Adjutant General's Office.			
REFERENCE OR OFFICE SYMBOL	SUBJECT		
	LD Determination		
TO (Ind conc) (Ind CO)	FROM (CO MTF conc)	DATE	CMT 1
<p>1. (For the individual concerned). You are hereby informed that your hospitalization during the period, _____ to _____ resulted from your incapacitation. This incapacitation was caused by your intemperate use of alcohol or other drugs and is considered "Not in Line of Duty - Due to Own Misconduct", and will be considered as lost time with no pay entitlement due. Any appeal of this finding may be submitted in writing IAW the provisions of para 3-10, AR 600-33, to your commander.</p> <p>2. (For the unit Commander). You are hereby informed of the above hospitalization and line of duty findings concerning a member of your command. Action should be taken to insure that the individual's personnel officer and the custodian of his finance records are informed and that necessary morning report entries are completed.</p>			
DA FORM 2496 1 FEB 62		REPLACES DA FORM 15, EXISTING SUPPLIES OF WHICH WILL BE ISSUED AND USED UNTIL 1 FEB 65 UNLESS SOONER EXHAUSTED.	
		*GPO: 1971 - 441-088	

Figure 3-3

REPORT OF INVESTIGATION LINE OF DUTY AND MISCONDUCT STATUS <small>(AR 600-33 or AFR 35-67)</small>				DATE 8 Jul 74			
1. INVESTIGATION OF <input checked="" type="checkbox"/> INJURY <input type="checkbox"/> DISEASE <input type="checkbox"/> DEATH				3. STATUS <input checked="" type="checkbox"/> REGULAR OR EAD			
2. TO: (Major Army or Air Force Commander) Commander Fort George G. Meade, Maryland 20755				b. CALLED OR ORDERED TO AD FOR (1) <input type="checkbox"/> MORE THAN 30 DAYS (2) <input type="checkbox"/> 30 DAYS OR LESS			
4. LAST NAME - FIRST NAME - MIDDLE INITIAL Jones, John J.		5. SERVICE NO./SSAN 000-00-0000	6. GRADE SSG (E6)		c. <input type="checkbox"/> INACTIVE DUTY TRAINING (Type)		
7. ORGANIZATION AND STATION OF INDIVIDUAL USA RMS, Baltimore, Maryland				d. <input type="checkbox"/> SHORT TOUR OF ACTIVE DUTY FOR TRAINING			
8. OTHER MILITARY PERSONNEL INVOLVED IN THE SAME INCIDENT <small>(Last Name - First Name - Middle Initial)</small>				SERVICE NUMBER OR SSAN	GRADE	LOD INVESTIGATION MADE YES      NO	
						DURATION <small>(Applies ONLY to 3c and 3d)</small>	
						START	
						FINISH	
9. BASIS FOR FINDINGS (As determined by investigation)							
a. CIRCUMSTANCES	(1) HOUR 1535	(2) DATE 4 May 74	(3) PLACE Baltimore, Maryland				
(4) HOW SUSTAINED Attempted Suicide				b. MEDICAL DIAGNOSIS Brain Syndrome			
c. <input type="checkbox"/> WAS <input checked="" type="checkbox"/> WAS NOT PRESENT FOR DUTY				e. INTENTIONAL MISCONDUCT OR NEGLECT <input checked="" type="checkbox"/> WAS <input type="checkbox"/> WAS NOT			
d. ABSENT <input type="checkbox"/> WITH <input checked="" type="checkbox"/> WITHOUT AUTHORITY				f. <input type="checkbox"/> WAS <input checked="" type="checkbox"/> WAS NOT MENTALLY SOUND			
4. REMARKS On 4 May 74, EM was admitted to Kimbrough Army Hospital, Baltimore, MD. Following an apparent suicide attempt, SSG Jones was reported to have swallowed 2 bottles of sleeping pills, inflicted multiple lacerations on his left arm with a razor blade, and then jumped from a 4th floor window of the hotel in which he was registered. Investigation reveals SS Jones was undergoing psychiatric treatment at Kimbrough hospital and psychiatrist states he was not mentally sound. However, since EM was AWOL at time of suicide attempt, my findings must be NOT IN LINE OF DUTY. EM unable to be questioned. (Mentally unsound) Inclosures: 1. Orders; 2. DA Form 2173; 3. Psychiatric Report; 4. Witness statement (Wells).							
10. FINDINGS (Do not complete in death cases)				ORGANIZATION AND STATION OF INVESTIGATING OFFICER HQ, USA RMS Baltimore, Maryland			
<input type="checkbox"/> IN LINE OF DUTY				SIGNATURE AND TYPED NAME OF INVESTIGATING OFFICER JACK A. STERN			
<input checked="" type="checkbox"/> NOT IN LINE OF DUTY - NOT DUE TO OWN MISCONDUCT				GRADE 2/LT	BRANCH INF	SERVICE NO./SSAN 000-00-0000	
<input type="checkbox"/> NOT IN LINE OF DUTY - DUE TO OWN MISCONDUCT							
ACTION BY APPOINTING AUTHORITY				ACTION BY REVIEWING AUTHORITY			
HEADQUARTERS		DATE		HEADQUARTERS		DATE	
				HQ, USA RMS, Baltimore, MD		12 Jul 74	
<input type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED <small>(Reasons and substituted findings are on reverse)</small>				<input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DISAPPROVED <small>(Reasons and substituted findings are on reverse)</small>			
SIGNATURE AND TYPED NAME				SIGNATURE AND TYPED NAME			
SAME AS REVIEWING AUTHORITY				S.E. JUTERBOCK			
GRADE	BRANCH	SERVICE NO./SSAN	GRADE	BRANCH	SERVICE NO./SSAN		
			MAJOR	AGC	000-00-0000		
FOR ACTION OF OFFICE INDICATED IN ITEM 7							
Commander Fort George G. Meade, Maryland 20755 19 Jul 74 Disapproved. Changed to IN LINE OF DUTY, per Rule 10, Appendix C EM not mentally sound at inception of AWOL. BY AUTHORITY OF THE SECRETARY OF THE ARMY (AR 600-33); cy fur Ind by mail 20 Jul 74							
						R. G. FLOWERS Colonel, AGC Adjutant General	

DD FORM 261  
1 OCT 66

REPLACES EDITION OF 1 AUG 66, EXISTING SUPPLIES OF WHICH WILL BE USED UNTIL EXHAUSTED.

Figure 3-4

## APPENDIX A

### CONDUCT OF AN LD INVESTIGATION

---

**A-1.** Formal LD investigations will be conducted according to the procedures contained in this regulation. The provisions of AR 15-6 may be used as a guide.

**A-2.** The investigating officer will insure that pertinent sections of DA Form 2173 are completed as shown in paragraph 3-5, this regulation.

**A-3.** An individual subject to a line of duty investigation should be notified of the impending investigation and its purpose. He will be permitted to submit evidence or statements, sworn or unsworn. If a statement from the individual being investigated is not obtained, the reason for failure to obtain a statement will be given in the LD report of investigation. If practicable, the individual investigated will be permitted to be present at the examination of witnesses if the investigation is to be continued beyond the examination of documentary evidence. When the individual being investigated is mentally incompetent or in such physical condition that he is unable to act for himself, an officer of mature judgment should be appointed to represent him and perform necessary functions in his behalf.

**A-4.** Primary effort should be directed toward acquiring evidence from persons who have a personal knowledge of an incident or of material conditions and circumstances leading up to the incident. So far as practicable, all known witnesses who have a personal knowledge of the fact will be interviewed. Although spontaneous statements are preferable to questions and answers, such statements are often ambiguous or obscure on material points. In such cases, the testimony will be developed further by recorded questioning by the investigating

officer. If the testimony is conflicting, the witness will be reinterrogated to determine the facts.

**A-5.** If an autopsy has not been conducted and there is any doubt as to the medical cause of death, the investigating officer will request the responsible installation commander to have an autopsy conducted. If a medical officer is not available, the installation commander should authorize the employment of a civilian physician to conduct the autopsy.

**A-6.** If it is not well established by a coroner's inquest (see chap. 8, AR 600-10) or other means that death was accidental or the result of foul play or self-destruction, the investigating officer will recommend to the appointing authority that an officer be appointed to conduct an inquest.

**A-7.** In cases of disease, particular consideration will be given to the questions of whether the illness was due to any condition or disease which existed prior to entry upon active duty.

**A-8.** If it is known, suspected, or alleged that the individual was under the influence of intoxicants, hallucinogens, or drugs, when injury or disease was incurred, an attempt will be made to determine the extent of the influence as it may be a material point in determining the extent of misconduct. Additionally, when the individual is hospitalized because of incapacitation resulting from the intemperate use of alcohol or other drugs, a statement reflecting only the portion of hospitalization caused by his being incapacitated, will be obtained from the MTF.

**A-9.** Testimony of witnesses will be secured as

to the general behavior, rationality of speech, and muscular coordination of the individual as compared to similar factors at a time when it was known that the individual was not under the influence of intoxicants, hallucinogens, or drugs.

**A-10.** Blood alcohol and other tests for intoxicants will be used whenever appropriate, feasible, and lawful. (Laboratory tests may be made if use of narcotics or dangerous drugs is in question. Such tests constitute a medical officer's aid to diagnosis and will be interpreted only by a medical officer or physician.) When obtained, the results will be added as an exhibit to the line of duty report of investigation.

**A-11.** In case of apparent or attempted self-destruction, or any case in which the mental competency is questioned, the investigating officer will obtain the opinion of a psychiatrist as to the mental condition of the individual. However, prior to obtaining this opinion, the investigating officer must provide the psychiatrist with all information available. In addition, the investigating officer will extend his investigation to include all available evidence concerning the mental condition of the individual during and prior to the events leading up to apparent or attempted self-destruction which might disclose the cause, nature, and extent of any mental unsoundness. If the individual was AWOL at the time of self-destruction, evidence will be obtained which will describe the factors associated with the individual's mental condition both at the commencement of the AWOL and at the time of the incident.

**A-12.** If resistance to custody by law enforcement agents is alleged, the investigation will be extended to determine whether lighting conditions, uniforms, and other similar factors were such that the individual concerned should have recognized the agents as such; should have understood any instructions or commands given; and should have understood the degree of restraint imposed.

**A-13.** If death resulted from actions of another person who is still alive, the LD report of in-

vestigation will indicate what disciplinary action was taken or will be taken against that person.

**A-14.** A copy of each exhibit will be attached to each copy of the line of duty report of investigation. The original copy of each exhibit normally will be attached to the original of the report of investigation. If it is necessary to make a typewritten copy of the original for any reason (e.g., illegibility, additional copies, or translation), the copy will be attached in addition. Copies of exhibits in lieu of the original exhibits may be attached to the original of a report of investigation only when there is a requirement that the original exhibits are to be filed elsewhere, or such documents are the personal property of individuals or estates, e.g., personal letters or suicide notes addressed to particular persons. When possible, these documents should be reproduced by photocopy or similar means of duplication.

**A-15.** A copy of a statement taken in another investigation for a different purpose may be used as an exhibit of a line of duty investigation if the information contained is material to the LD investigation, the statement meets the requirements of paragraph 3-4, and the person whose line of duty status is being investigated has been permitted to examine the statement and refute any unfavorable testimony.

**A-16.** The investigating officer will attach exhibits, diagrams, or photographs pertinent to the case, if practicable.

**A-17.** If the investigating officer cannot readily arrive at a finding based on the policies and guidance outlined in this regulation, he should contact his local staff judge advocate.

**A-18.** When the investigating officer has completed his investigation and prepared his report (see para 3-8), he will mark the appropriate line of duty finding in Item 10, DD Form 261 in injury and disease cases only, complete the box immediately to the right of Item 10, and forward the report to the appointing authority. A line of duty determination is not made in death cases.

## APPENDIX B

### REVIEW OF LD INVESTIGATIONS

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**B-1.** After the report of investigation has been prepared, it will be reviewed in turn by the appointing, reviewing, and final approving authorities.

**B-2.** LD determinations are to be based upon the information contained in the investigation and this regulation. LD authorities are not to influence the decision concerning LD determinations of other LD authorities.

**B-3.** At any stage of review, the line of duty report of investigation may be returned through review channels for corrective action.

**B-4.** The opinions of the command surgeon and staff judge advocate should be obtained when appropriate.

**B-5.** The appointing authority and the reviewing authority will respectively complete boxes on the DD Form 261 titled "Action by Appointing Authority," and "Action by Reviewing Authority." The appointing authority will approve or disapprove the finding of the investigating officer. The reviewing authority will approve or disapprove the finding of the appointing authority. The final approving authority will approve or disapprove the finding of the reviewing authority. Care will be taken that the identity of the headquarters (appointing, reviewing, or final approving authority) is clear and includes a complete address. If the address includes an APO, the city of the appropriate US Post Office will be indicated; i.e., New York, San Francisco, etc., and the APO number. The final approving authority will make his entry in the space at the extreme bottom of the DD Form 261 or on the reverse of DA Form 2173 (see fig. 3-4 or 3-2).

**B-6.** Commanders may designate officers of The Adjutant General's Corps assigned to their headquarters and officers of the Medical Services Corps for AMEDD organizations to authenticate LD reports of investigation. The Chief, National Guard Bureau, may designate an officer not below field grade, on duty with the National Guard Bureau, to authenticate DD Form 261. He may further designate an alternate to any officer so designated to authenticate DD Form 261 in the absence of the principal designee. The alternate will be an officer not below field grade or a civilian employee of the National Guard Bureau whose regularly assigned duties are commensurate with duties normally assigned to officers not below field grade.

## APPENDIX C

PRINCIPLES GOVERNING LINE OF DUTY AND MISCONDUCT  
DETERMINATIONS IN THE ARMY

In every case where there is a formal investigation the ultimate function of that inquiry is to ascertain whether there exists substantial evidence of misconduct so as to rebut the presumption of "in line of duty." In arriving at such decisions, several basic rules can be applied to various fact situations. The specific rules of misconduct are—

**Rule 1.** Injury or disease proximately caused by the intentional misconduct or willful neglect of a member is incurred not in line of duty and due to misconduct. This is a general rule of application and must be considered in every case in which misconduct or willful neglect appears to be involved. As a general proposition, two questions must be resolved when a member incurs an injury or disease, whether the injury or disease was incurred in line of duty and whether it was due to misconduct. Normally, the two issues are resolved concurrently under the same facts and same rules.

**Rule 2.** Mere violation of military regulations, orders, or instructions, or of civil or criminal laws, in the absence of further showing of misconduct therewith, establishes no more than simple negligence. Simple negligence does not constitute misconduct. Therefore, a violation under this rule standing alone is insufficient to support a determination that the injury or disease resulted from misconduct. Though there has been a violation of a rule, even of a criminal nature, the facts must still be weighed to determine the proximate cause of the injury or disease. However, the violation is one factor to be examined and weighed with the other circumstances of a particular case.

**Rule 3.** Injury or disease resulting in incapacitation incurred as the result of the intemperate use of alcohol and other drugs is incurred not in line of duty and due to misconduct. This rule concerns the effect of the drug on the individual's conduct, as well as the physical effect thereof on his body. That is, any erratic or reckless conduct of the individual, directly attributable to the effect of the drug, which proximately causes his injury or disease is misconduct. The fact that the individual may have a pre-existing physical condition which caused him to be more susceptible to the effects of the drug does not excuse such misconduct. However, the use or consumption of a drug by mistake or accident is not misconduct.

**Rule 4.** Injury or disease resulting in incapacitation incurred as the result of the intemperate use of intoxicating liquor is incurred not in line of duty and due to misconduct. The principles stated in Rule 3 are also applicable here. While the mere drinking of alcoholic beverages is not in itself misconduct, one who voluntarily becomes intoxicated is held to as high a standard of conduct as one who is sober and, consequently, his intoxication does not excuse his conduct. Whether a person was in fact intoxicated at the time of an incident is often difficult to prove. While normally there are behavior patterns common to persons in an intoxicated state, some, if not all, of these characteristics may be caused by other conditions. For example, an apparent drunken stupor might in fact have been caused by a blow on the head. Consequently, where the fact of intoxication is not clearly ascertainable, care should be taken to determine the actual cause of any irrational behavior which is similar to or the same as that normally indicating a state 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 duty and due to misconduct. One who resists arrest, or who attempts to escape from custody, can reasonably anticipate that necessary force, even force which may be excessive under the circumstances, will be used to restrain him and, consequently, is considered to be acting with a wanton disregard for his personal safety. Such conduct is willful neglect.

**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 and due to misconduct. Unexploded ammunition, highly flammable liquids, and firearms are inherently dangerous, the handling and use of which necessitate a high degree of care. A member who has knowledge of the nature of such an object or substance, and who voluntarily or willfully handles or tampers with the same without authority or in disregard of its dangerous qualities, is willfully negligent. This rule is not applicable where a member is required by assigned duties or authorized by appropriate authority to handle the explosive, firearm, or liquid, and reasonable precautions have been observed. The fact that the member concerned has received training or performed duties in connection with the use or employment of such objects or substances will have an important bearing on the question whether reasonable precautions are observed.

**Rule 7.** Injury incurred as the result of an act of wrongful aggression, or of voluntary participation in a fight or similar encounter, where one is at least equally at fault with his adversary in starting or continuing the altercation, is incurred not in line of duty and due to misconduct. An injury received by a member in an affray in which he is the aggressor is the result of his own misconduct. The rule does not apply where a person is the victim of an unprovoked assault and he sustains injuries in an attempt to defend himself. However, provocative actions or language by the member used under circumstances wherein a reasonable man would antici-

pate retaliation therefor is evidence of a reckless or wanton disregard for personal safety, and injuries proximately resulting therefrom are attributable to misconduct. Where an adversary uses excessive force or means that could not reasonably have been foreseen under the circumstance, the injury is not considered as having been proximately caused by misconduct. However, except as it may be warranted in the exercise of self-defense, for a member to persist in a fight or other encounter after his adversary produces a dangerous weapon is to act in wanton disregard for safety and constitutes willful neglect.

**Rule 8.** Injury incurred as the result of driving a vehicle when in an unfit condition to drive, with which unfit condition the member has or is charged with knowledge, is incurred not in line of duty and due to misconduct. A member involved in an automobile accident caused by his having fallen asleep while driving is not, solely by virtue thereof, guilty of willful neglect. The test to be applied is whether a reasonable person, under circumstances and conditions similar to those under which the member is driving, would undertake the trip, or would have a forewarning or apprehension of inability to complete the trip without falling asleep while operating the vehicle. Unfitness to drive may be caused by voluntary intoxication or use of drugs.

**Rule 9.** Injury incurred as the result of erratic or reckless conduct, or other deliberate course of conduct without regard for personal safety or the safety of others, is incurred not in line of duty and due to misconduct. This rule has its chief application in the operation of a vehicle, but may be applied in connection with any deliberate conduct which imperils the safety of self or other. "Thrill" or "dare-devil" type activities also are exemplary of circumstances in which this rule may be applied.

**Rule 10.** A wound or other injury deliberately self-inflicted by a member who is mentally sound is incurred not in line of duty and due to misconduct. Although there is no requirement for a line of duty or misconduct determination

in death cases, the act of suicide or attempted suicide is so related to the self-infliction of wounds that a discussion thereof in connection with this rule is appropriate. Suicide is the deliberate and intentional destruction of one's own life by a person of years of discretion and sound mind. The law presumes that a sane man will not commit (or make a bona fide attempt to commit) suicide and this presumption prevails until overcome by substantial evidence. Evidence which merely establishes the possibility of suicide, or merely raises a suspicion that death is due to suicide, is not sufficient to overcome the general line of duty presumption. However, in some cases, a determination that death was the result of a deliberately self-inflicted wound may be based on circumstances surrounding the finding of a body which are clear and unmistakable, and there are no circumstances indicating the contrary.

**Rule 11.** Intentional misconduct or willful neglect of another individual is imputed to a member if the latter exercises control over and is

thus responsible for the former's conduct, or if the misconduct or neglect establishes concerted action sufficient to establish a joint enterprise. The mere presence of the member is not a basis for imputing to him the misconduct or willful neglect of another, even though by speaking up he may have exercised some influence over the circumstances. However, even though a member is not the principal action in acts which constitute misconduct, if he has substantially participated with others in such a venture, his conduct will be misconduct.

**Rule 12.** The line of duty and misconduct status of a member injured or incurring disease while participating 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. In determining whether an injury is due to willful neglect, the nature of the outside activity should be considered in connection with the prior training and experience of the member.

The proponent agency of this regulation is the US Army Adjutant General Center. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) direct to HQDA (DAA-CA-D) Washington, D.C. 20314.

By Order of the Secretary of the Army:

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