

# **GUIDE TO FINANCIAL LIABILITY INVESTIGATIONS**

As prepared by:

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## **REFERENCES**

AR 735-5, "Policies and Procedures for Property Accountability" (February 2005)

DA PAM 735-5, "Financial Liability Officer's Guide" (April 2007)

Fort Carson OSJA, "Financial Liability Officer's Guide" (October 2007)

## **INTRODUCTION**

This guide is intended to assist survey officers, who have been appointed under the provisions of Army Regulation (AR) 735-5, to conduct timely, thorough, and legally sufficient investigations into suspected loss, damage, or destruction of government property. A brief checklist is included at the end of the guide, and may be used as a reference to consult during each stage of the investigation. The questions in the checklist will ensure that the survey officer has covered all of the basic elements necessary for a sound investigation.

## **DUTIES OF SURVEY OFFICER & OVERVIEW OF PROCESS**

Upon appointment as a survey officer, your primary military duty becomes the completion of the report of survey. As a survey officer, you investigate and analyze the facts surrounding the loss, damage, or destruction of government property and recommend whether to assess liability against someone responsible for the property. You may recommend liability against a person only if the **evidence indicates that it is more likely than not** that the negligence or willful misconduct of that person proximately caused the loss. Throughout this guide, the term "loss" includes a loss of, damage to, or destruction of government property, or a loss of accountability of such property.

Determining whether there has been a loss caused by a person's negligence or willful misconduct is the primary goal of the investigation. This task is accomplished through the gathering of facts, analysis of the evidence, and preparation of the report of survey. If, upon completion, liability is sought to be assessed upon an individual or individuals the investigation must be submitted for legal review. Subsequently, the investigation and legal review must be sent to the appointing authority. The appointing authority will review the findings and recommendation and forward them to the approving authority for disposition.

## **CONDUCTING THE INVESTIGATION**

### Administrative Matters

1. Upon appointment as a survey officer, the Appointing Authority will provide a copy of DD Form 200, "Financial Liability Investigation of Property Loss." The front of the form should be completed, and should include basic information concerning the lost, damaged or destroyed property. Read the

appointment memorandum, DD Form 200, as well as any attached exhibits and promptly begin the investigation.

### Obtaining Witness Testimony

1. In most cases, witness testimony will be required. The best interviews occur face-to-face, but, if necessary, interviews may be conducted by telephone, mail, or even e-mail. Because of the preference for face-to-face interviews, telephone and mail interviews should be used only in unusual circumstances. Information obtained telephonically should be documented in a memorandum for record.

2. Witness testimony **should be taken on DA Form 2823**. Although there is a box for the witness's social security number, there is no valid reason to require that information. Investigating officers should not require the entire SSN for witness statements. If a witness has a very common name (i.e., Jon Jones, Sally Smith) using the last 4 of the SSN will be sufficient to later identify the witness. Also, home addresses and phone numbers should not be recorded on the DA Form 2823 unless absolutely necessary.

Legible handwritten statements and/or questions and answers are ordinarily sufficient. If the witness testimony involves technical terms that are not generally known outside the witness's field of expertise, the witness should be asked to define the terms the first time they are used.

3. Statements must be dated and signed by the individual making the statement. Further, the statement should be lettered alphabetically as an exhibit, followed by the date; the amount; and organization... all as is listed on the face of the financial liability investigation of property loss. For example:

*Exhibit A, FLIPL #09-002, 12 January 2009, \$1,000.00, HHC, 49th Quartermaster Group*

4. Investigating officers **do not have the authority to subpoena witnesses**, and their authority to interview civilian employees may be subject to certain limitations. Prior to interviewing civilians, the survey officer should discuss this matter with the local Labor Counselor. Commanders and supervisors, however, have the authority to order military personnel and to direct Federal employees to appear and testify. Civilian witnesses who are not Federal employees may agree to appear, and, if necessary, be issued invitational travel orders. This authority should be used only if the information cannot be otherwise obtained and only after coordinating with the legal advisor or appointing authority.

### Obtaining Documentary and Physical Evidence

It may be necessary to collect documentary and physical evidence such as applicable regulations, existing witness statements, accident or police reports, photographs, and unit SOP's or policy letters. This information can save valuable time and effort in ascertaining facts. Accordingly, this information should be obtained at the beginning of the investigation and if possible and appropriate, the location of the incident/property being investigated should be done first hand.

### Developing an Investigative Plan

1. The primary purpose of the investigation is to gather evidence, make findings of fact, and make appropriate recommendations to the appointing authority. Before obtaining information, however, the survey officer should develop **an investigative plan that consists of (1) an understanding of the facts required to reach a conclusion, and (2) a strategy for obtaining evidence**. This should include a list of potential witnesses and a plan for when each witness will be interviewed. Begin by interviewing those individuals who **are logically connected to the lost, damaged or destroyed property**. These may be the individuals who are identified in block 9, DD Form 200. If the circumstances surrounding the loss, damage, or destruction are vague, begin your investigation with the hand receipt holder. It may be

necessary to interview sub-hand receipt holders and other individuals who used the property. As the investigation proceeds, it may be necessary to review and modify the investigative plan.

2. The investigating officer should begin the investigation by identifying the information already available, and determining what additional information will be required before findings and recommendations may be made to the appointing authority. An important part of this is locating the appropriate standards, rules, or procedures that govern the circumstances under investigation. The legal advisor or other functional expert can also assist in determining the information that will be required.

3. In conducting the investigation, strive to answer three basic questions:

- (1) WHAT was lost, damaged, or destroyed?
- (2) WHO was responsible for the loss, damage, or destruction?
- (3) HOW was it lost, damaged, or destroyed?

In order to assess financial liability, there must be a demonstration of an **actual loss** to the Government, that some individual owed a **duty of care** to the property, that the individual **breached his or her duty of care**, and that such a breach was the **proximate cause** of the loss to the Government. These elements are the foundation of the legal requirements for liability.

#### Determining the Status of the Property and Documenting the *Loss* to the Government

1. At the outset, the primary task is to determine **what property was lost, damaged, or destroyed, and the actual loss to the Government**. This usually will be straightforward – examine the front side of DD Form 200; the affected property will be listed in blocks 4 through 7, as well as on the continuation sheets, if any. The specific characterization will be marked in the appropriate box in block 9.

- a. A loss must be proven. It may be helpful to obtain records of issuance, such as hand receipts, and reconcile such documents with inventories and other records.
- b. To prove property damage or destruction, examine the property; obtain police reports, and obtain estimated or actual costs for the damage or destruction. Using this method, you answer the “what” question and are able to support your answer with exhibits.

2. If the investigation involves damaged property, **examine the property immediately**. You then must release the property for repair or turn-in. If an expert opinion would be helpful in determining the cause of the damage, ensure that technical inspectors examine the property and give an opinion on the probable cause of the damage. Photographs can be extremely useful, and should be included as exhibits.

3. In a situation where property is thought to be lost, **there is a duty to attempt to locate the property**. The nature of the search will depend on the type of property lost and the “why” and “where” of its loss. For example, if night vision goggles were lost on a field training exercise (FTX), check with other units that were on the FTX and see if they have them. If property such as desks were lost, you may be required to conduct a thorough inventory of desks in the unit. If property is found, consult AR 735-5, paragraph 14-14 for guidance.

#### Determining Who Owed a *Duty of Care* to the Property and Who is Responsible for the Loss

1. Identifying the individual or individuals who were responsible for the property is the first step in establishing financial responsibility and/or liability. **AR 735-5, paragraph 13-29a lists the five types of**

**responsibility.** If you are able to determine all the other four “W” questions about the circumstances of the loss or damage, you usually will be able to answer the “who” question. If you are unable to pinpoint the circumstances which lead to loss, damage or destruction, you may not be able to resolve who should be held financially liable for the loss, damage or destruction.

2. If you cannot determine to whom the property was issued, the individual **who last was responsible** for it may be liable. The basis for a recommendation of liability would be a **negligent loss of accountability.** For example, CW3 Anderson issued the property to an unknown individual, and the property is now missing. CW3 Anderson is liable if he negligently failed to maintain accountability for the property. Alternatively, if CW3 Anderson issued the missing property to SGT Johnson, then CW3 Anderson should not be held liable, even though a subhand receipt was not obtained, because accountability for the property was not lost when it was issued to SGT Johnson. The property clearly was issued to SGT Johnson, so CW3 Anderson’s negligence in issuing the property without a hand receipt did not cause the loss. (See the discussion below on proximate cause.)

3. In the case of lost property, it is oftentimes useful to determine what happened to the property – some relevant questions involve determining where was it stored, and why it was not secured properly; was it hand receipted, and if so, why was accountability of the property lost? Answering these questions can help shed light on who was responsible. If it was subhand receipted or given to an identified individual, you must attempt to resolve the questions discussed above as they pertain to that individual. The goal is to determine **who was the last person identified as responsible for the property**, and then determine “why” the property is missing.

#### Determining Other Circumstances of the Property Loss

1. Oftentimes, when and where the loss, damage, or destruction occurred is clear. The critical task is to **confirm the accuracy of the information in block 9** of DD Form 200. In other cases—such as when an inventory determined property to be missing—determining “when” and “where” the loss occurred may be difficult, or even impossible. In such cases, you only may be able to determine “why” the loss occurred and “who” was responsible. For example, you may conclude that because the property was left unsecured, it was lost through theft at an indeterminate time or that it was issued at an indeterminate time without a hand receipt, and that this caused a loss of accountability.

2. In instances where “when” and “where” the loss occurred is ambiguous or impossible to ascertain, attempt to determine when the property was **last accounted for**. Resolving when the property was last accounted for will also assist you in determining the “who” and “why” questions of the loss.

#### **LEGAL STANDARDS FOR IMPOSITION OF FINANCIAL LIABILITY**

After establishing that there is an **actual loss to the Government**, and that an individual or individuals owed a **duty of care to the property**, financial liability for lost, damaged or destroyed Government property may be imposed if:

- a. The individual was “**simply or grossly negligent**” or committed “**willful misconduct**,” and
- b. Such negligence or willful misconduct was the “**proximate cause**” of the loss or damage.

The terms “negligence,” “willful misconduct” and “proximate cause” have fairly complex legal meanings, and are discussed below.

## Willful Misconduct

Willful misconduct involves an **intentional act specifically aimed at damaging or losing the property**. This term means that an individual intended to or purposely damaged or lost the property. For example, if SSG Snuffy became angry and took a baseball bat to the office copier, he would have committed an act of willful misconduct. He intended to destroy the copier.

## Negligence

1. There are two types of negligence – “simple” and “gross” – that may lead to the imposition of financial liability for lost, damaged or destroyed government property:

a. AR 735-5 defines “simple negligence” as the **absence of due care** by an act or omission of a person lacking the degree of care for the property a **reasonably prudent person** would have taken under similar circumstances, to avoid loss, damage, or destruction to the property. In other words, simple negligence is an unreasonable act, or an unreasonable failure to act, resulting in loss, damage, or destruction of property. To be unreasonable, the evidence must show a typical person of similar experience and relationship to the property would have acted differently as a matter of common sense. *See* AR 735-5, paragraph 13-29b(4).

b. While negligence is essentially failing to use common sense, **gross negligence is failing to use any sense at all**. If MAJ Payne, for instance, left a space heater on in her office near the curtains, forgot about it, and the curtains caught on fire, she would have committed an act of simple negligence. Someone else, using common sense and exercising due care, would not have left a space heater unattended near combustible materials. In contrast, if MAJ Payne brought a metal can into her office, filled it with charcoal, doused it with a few gallons of gasoline and lit it thereby vaporizing part of the office, she would have committed an act of gross negligence. Another person of her age and experience, using any degree of sense at all, would have known better.

c. In some cases, you may not be able to determine the actual cause of the loss. Nonetheless, you may still be able to conclude that a certain individual is responsible when you find that an individual had **exclusive access and control over property** and you can rule out all other causes for the loss or damage. Such “presumed negligence” can best be illustrated by these examples.

EXAMPLE 1: SSG Green has exclusive control over the supply room and the property inside; he has the only key. All linen was accounted for when he signed for the supply room. Three months later, an inventory determines that thirty percent of the linen is missing. No signs of theft can be found. Because SSG Green had exclusive control of the supply room and other causes of loss have been ruled out, SSG Green may be presumed to have caused the loss.

EXAMPLE 2: PV2 Johnson goes absent without leave. His locker is immediately secured and its contents are inventoried. Most of its contents, including his field equipment, are missing. Because PV2 Johnson had exclusive control over his locker, and it was immediately secured and inventoried, he may be presumed to have been the cause of its loss. If the locker was neither secured nor its contents inventoried for some time after PV2 Johnson went AWOL then the presumption may not apply. You must be able to rule out theft.

2. When government quarters have been damaged, you must determine whether gross negligence was involved because the limits on liability are different. Also, regarding family housing and other government quarters, AR 735-5, paragraph 13-32c(4), provides that, under certain circumstances, occupants are responsible for the gross negligence or willful misconduct of members of their household, guests, and pets therein.

### Proximate Cause

If you can show that another individual of similar experience and relationship to the property would have acted differently as a matter of common sense, then you have established negligence. To hold someone liable, however, you also must establish that the **person's acts or omissions in a natural and continuous sequence, unbroken by a new cause, produced the loss, damage or destruction**. This causation is referred to as "proximate cause" in AR 735-5, and may best be explained by the following examples:

EXAMPLE 1: PFC Jones is driving a government vehicle at seventy miles per hour in an area marked thirty miles per hour. He fails to negotiate a sharp turn at the bottom of the road and crashes into an embankment destroying the vehicle. If the investigation officer concludes that Mr. Jones was negligent by driving too fast for the conditions, PFC Jones' negligence caused the accident. By driving too fast, PFC Jones' negligence "proximately caused" the loss.

EXAMPLE 2: CPT Crash is driving while intoxicated. A limb on an old pine tree hanging over the road breaks, falls, and shatters his windshield while he is driving. Here, even though CPT Crash was negligent by driving while intoxicated, his negligence was not the "proximate cause" of the accident. The damage caused by the falling tree limb was independent of his level of intoxication. In other words, the damage would have occurred even if CPT Crash had been sober.

EXAMPLE 3: SFC Brown negligently issued property without obtaining hand receipts. The property cannot be located, nor can you determine to whom the property was issued. The property cannot be located because no accountability documents exist indicating to whom the property was issued. By failing to properly obtain hand receipts for the now missing property, and because you cannot determine to whom he issued the property, SFC Brown's negligence "proximately caused" the loss.

## **FINDINGS & RECOMMENDATIONS**

*Evidence* → *Exhibits* → *Findings* → *Recommendations* → *Conclusion*

It is common and advisable to substitute the entry of findings and recommendations in block 15a of DD Form 200 with a memorandum for record – simply entering "See Attached Memorandum" is sufficient. A sample memorandum for record is included for your reference at the end of this guide.

### Findings

1. Upon completion of the investigation, begin by drafting the findings. AR 735-5, paragraph 13-32a requires a statement of the facts, as supported by the evidence obtained through the investigation, in your own words. The findings must be as complete as possible, and should be a thorough and impartial, so any reviewer can easily see the basis for assessment or relief from liability without returning the investigation for more information. When drafting your findings, **start with a conclusion or a bottom line up front**. Draw your conclusions from the evidence, not unsupported speculations or suspicions.

2. To the extent possible, fix dates, places, persons, and events, definitively and accurately. It is **highly advisable to include a timeline of events**. At the conclusion of the investigation, the survey officer should be able to answer questions such as: **Who** was involved, and to what extent? **What** occurred? **Where** did it occur? **When** did it occur? **How** did it occur? Exact descriptions and values of any property at issue in the investigation should be provided.

3. A finding is a clear and concise statement that can be deduced from the evidence in the record. In developing findings, only the facts and any reasonable inferences that may be drawn from those facts may be relied upon. Statements of findings should refer to the exhibit or exhibits relied upon in making each finding. Findings **must be supported by the documented evidence that will become part of the report**. Exhibits should be arranged in the order they are discussed in the findings.

4. When drafting your findings, it is critical to support all asserted facts by citing specific exhibits. The exhibits should contain all the evidence you collected during the course of the investigation. The evidence is the only legitimate basis for your findings. In writing findings, your goal is to explain, in narrative format, the cause of loss, damage or destruction. The **evidence must support findings**, and **findings must support the conclusion**.

5. In situations where there is limited evidence available, and it is mostly comprised of witness testimony, caution must be used when using potentially self-serving statements from the individual who was responsible for the property. It is important to explain what other evidence confirms the self-serving statement. If the investigation contains contradictory evidence you must explain how you resolved the contradiction. For further guidance, see AR 735-5, paragraphs 13-32a(1) and a(2).

### Recommendations

1. After making findings, recommend whether assessment of financial liability is appropriate. Start this section with the word "Recommendations." Indicate whether the investigation lists property for which a claim may be processed under AR 27-20. For further guidance, see AR 735-5, paragraph 13-32c.

a. "Relief from responsibility and accountability:" if you are unable to determine the cause of, or responsibility for, the loss, damage, or destruction, recommend all parties be relieved of accountability and responsibility. Make a similar recommendation if you determine that neither negligence nor willful misconduct was involved.

b. "Financial Liability:" if you conclude that an individual's negligence or willful misconduct caused the loss, damage or destruction, you must make an assessment of financial liability. Start a recommendation for financial liability by giving the individual's full name, social security number, monthly base pay (for DoD civilians, 1/12 of annual pay) at the time of the loss, and the date that the individual is expected to terminate service or employment. You must clearly state the amount of liability.

### Computation of Liability

1. An individual's liability usually will be limited to the lesser of: (1) **one month's base pay** for Soldiers (or 1/12 of annual pay for civilians) at the time of the loss or (2) **the actual loss** to the government. When two or more investigations have been initiated for the same incident, AR 735-5, paragraph 13-41b(3) specifies that liability is still limited to one month's base pay. When two or more investigations arise out of the same incident, the **investigations must be cross-referenced** to each other, pursuant to AR 735-5, paragraph 13-4a.

2. AR 735-5, paragraph 13-41a recognizes that **in certain circumstances it is appropriate to assess the full amount of loss** to the Government without reference to monthly pay. Soldiers who lose personal arms or equipment are liable for the full amount of the loss, damage or destruction. Persons who lose, damage or destroy government quarters or their contents through gross negligence or willful misconduct are liable for the full amount of the loss, damage or destruction. At times an individual owes a higher fiduciary duty, as with accountable officers and persons losing public funds. At times an investigation may form the basis for an affirmative claim against a third-party tortfeasor. Other circumstances involve larger entities able to absorb the full amount of any loss to the Government, such as states, contractors and NAFIs.

3. When property may be repaired, several factors need to be considered when assessing financial liability or the actual cost to the government. *See* AR 735-5, Appendix B, paragraph B-1. Generally, the cost of repair consists of the sum of the costs of material, labor, overhead, and transportation, minus any salvage or scrap value of replaced component parts. Further, when the actual cost of damage cannot be obtained in a reasonable period of time, **an estimated cost of damage may be used.**

4. For lost, destroyed or irreparably damaged property, a determination of the actual value of the property at the time of its loss or destruction must be made. The loss to the Government is this actual value, minus any salvage or scrap value.

a. “**Fair market value**” is the preferred method of fixing the value of property at the time of loss or damage is by a qualified technician’s appraisal IAW AR 735-5, Appendix B, paragraph B-2a.

b. “**Depreciation method**” may be used when an appraisal is not feasible or the property is in less than new condition. The depreciated value may be computed by subtracting depreciation from the standard price of a new item. Depreciation is not deducted on loss or irreparable damage to new property. AR 735-5, Appendix B, paragraph B-2b lists standard depreciations for several different types of property.

c. “Standard rebuild cost” and “Salvage value” are other means to assess the value of the damaged or destroyed property. *See* AR 735-5, Appendix B, paragraphs B-2c and B-3.

### Joint Liability

If a conclusion is reached where **more than one individual is responsible** for loss, damage or destruction, make a recommendation for joint liability in accordance with AR 735-5, paragraph 13-31c(5) (d), which refers to table 12-4. Compute charges in the following manner:

a. When the actual loss exceeds the combined monthly basic pay for all individuals combined, charge the full amount of the monthly basic pay of each soldier, or the full amount of 1/12 of the annual pay of each civilian employee.

b. When the actual loss is less than the combined monthly basic pay of all individuals, compute the charges in proportion to the Soldiers’ basic pay, or in proportion to 1/12 of the civilians’ annual pay. The method of computing collective and individual financial liability when more than one person is charged is best expressed by the following equation:

(person’s monthly basic pay / combined monthly pay of all liable) x loss to gov’t = liability

EXAMPLE: two soldiers are held jointly liable for an actual loss of \$1000.

The basic pay of Soldier A is \$500 and the basic pay of Soldier B is \$1000. Each Soldier will pay a proportional share. First, combine the Soldier's basic pay (\$500 plus \$1000). The combined basic pay figure is \$1500.

Next, divide each Soldier's basic pay by the combined basic pay figure and multiply this percentage by the actual loss amount to arrive at each soldier's financial charge.

Soldier A would owe \$333.33 (\$500 divided by \$1500, multiplied by \$1000). Soldier B would owe \$666.67 (\$1000 divided by \$1500, multiplied by \$1000).

### Completing DD Form 200

1. When completing Blocks 15b through 15k, record the amount of actual loss which takes into account depreciation in block 15b. Do not use the values from blocks 7 and/or 8 unless the item was new, or small arms. Enter the respondent's monthly basic pay in block 15c. Record the total amount of recommended financial liability in block 15d, after taking into consideration any applicable liability limits, discussed above. *See AR 735-5, figure 13-8.*

### **PROCESSING THE FINANCIAL LOSS**

#### Notification of Respondent(s)

1. Once you make an assessment of financial liability against an individual, you must give the individual a chance to examine the investigation of property loss, after the findings and recommendations have been recorded on the DD Form 200, and the opportunity to make a rebuttal statement. As a financial liability officer, you must notify all respondents by memorandum; a sample memorandum can be found at AR 735-5, Figure 13-14. The notification memorandum as sent to the respondent(s) must be included as an exhibit to the investigation.

2. When assessing financial liability against one person, the respondent should check an option in block 16a, and sign block 16g. **Completing these blocks is not an admission of liability.** If the respondent refuses to complete these blocks, enter the statement "Respondent refused to sign" in block 16g, and place the date refusal was made in block 16h. *See AR 735-5, paragraph 13-23b(3)(e).* When more than one individual is being recommended for charges of financial liability, however, have each respondent sign a continuation sheet as shown in AR 735-5, Figure 13-15. For further guidance, *see AR 735-5, paragraphs 13-34a & b, and paragraphs 13-35a, b & c.*

3. If the individual desires to submit matters in rebuttal, allow that person the **opportunity to seek legal assistance.** You may speed the process by making the legal assistance appointment for the Soldier. If the individual fails to submit a statement within the allotted seven-days, explain the omission when redrafting your findings and then forward the investigation. Rebuttals received after the allotted time are not barred from consideration.

#### Completing the Investigation

After accomplishing the above, ensure the investigation is administratively complete. To ensure completeness, go over the investigation using the instructions in AR 735-5, Figure 13-4 and Figure 13-8, and DA Form 7531, and the enclosed checklist. If you have any further questions, contact the Administrative Law Division.

## Legal Review

1. Before the final imposition of liability, the appointing authority must have review of the investigation for legal sufficiency. Generally, the legal review will determine:
  - whether the investigation complies with requirements in the appointing order and other legal requirements,
  - the effects of any errors in the investigation,
  - whether the findings and recommendations are supported by sufficient evidence, and
  - whether the recommendations are consistent with the findings.
2. After receiving a completed investigation, the appointing authority may approve, disapprove, or modify the findings and recommendations, or may direct further action, such as the taking of additional evidence, or making additional findings.

## CHECKLIST FOR INVESTIGATING OFFICERS

### 1. Investigative Plan:

- Does the investigative plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and order the interviews in the most effective manner?
- Does the plan identify witnesses no longer in the command and address alternative ways of interviewing them?
- Does the plan identify information not immediately available and outline steps to obtain the information?
- Have adequate copies of DA Form 2328?

### 2. Conducting the Investigation:

- Is the chronology being maintained in sufficient detail to identify causes for unusual delays?
- Is the information collected (witness statements, MFR's of phone conversations, photographs, etc.) being retained and organized?
- Is routine coordination with the legal advisor being accomplished?

### 3. Preparing Findings and Recommendations:

- Is the evidence assembled in a logical and coherent fashion?
- Is there a timeline or chronology of events to assist the Appointing Authority understand the situation and circumstances of the conduct or actions under investigation?
- Are the findings supported by the evidence? Does each finding cite the exhibits that support it?
- Is each recommendation supported by the findings?
- Are the findings and recommendations responsive to the tasking in the appointment memorandum?
- Did the investigation address all the issues (including systemic breakdowns; failures in supervision, oversight, or leadership; program weaknesses; accountability for errors; and other relevant areas of inquiry) raised directly or indirectly by the appointment memorandum?

### 4. Final Action:

- If financial liability is sought to be assessed, has the value of the liability been entered on the DD Form 200 properly?
- Was an appropriate legal review conducted?
- Did the appointing authority approve the findings and recommendations? If not, have appropriate amendments been made and approved?

## SAMPLE MEMORANDUM OF FINDINGS & RECOMMENDATIONS

### MEMORANDUM FOR RECORD

SUBJECT: FLIPL #09-0001 Findings & Recommendations

1. Pursuant to the appointing memorandum dated DD MMMM YYYY, I have completed a report of survey UP AR 735-5 and have prepared this memorandum to present my findings and recommendations. I have examined all the available evidence shown in block 9, and exhibits "1" thru "7" as indicated below. I have personally investigated the same and it is in my belief that the articles listed hereon and on any continuation sheets, total cost \$1,507.78, were [lost through the gross negligence of SFC Nixon.]

*[Other options]*

*(lost, damaged, or destroyed) through the simple/gross negligence of \_\_\_\_\_; or*

*(lost, damaged, or destroyed) by the willful misconduct of \_\_\_\_\_; or*

*(lost, damaged, or destroyed) as the result of an (unavoidable accident, an unpreventable theft, undeterminable circumstances, etc.).*

2. Findings: After reviewing all relevant information and evidence uncovered in the course of this investigation, based upon a preponderance of the evidence, I make the following findings:

a. SFC Nixon had custodial responsibility for the missing items pursuant to AR 735-5, paragraph 2-8a(4). This obligated SFC Nixon to ensure these items were cared for, and that proper custody and safekeeping were provided. The items listed in block 5 of the DD Form 200 are an accurate listing of all items currently missing from the supply room [Exhibit A]. SFC Nixon has the only key to the supply room.

b. SFC Nixon, the unit supply sergeant, on a number of occasions permitted soldiers in the unit to take the items, as described in block 5 of the DD Form 200, for use on a weekend hunting and camping trips [Exhibit A]. No hand receipts were ever issued to the dozens of soldiers who used the equipment listed in block 5 [Exhibit A].

c. SSG Ford was alleged to be the last individual to borrow equipment from the supply room prior to the cyclic inventory held on 1 December 2008 that discovered that items were missing [Exhibit A & B]

d. SSG Ford refused to provide a statement or any comment on the subject investigation [Exhibit C]. However, SGT Carter accompanied SSG Ford on a hunting and camping trip, and testified that he saw SSG Ford return all of the equipment that he had taken from the supply room. [Exhibit D].

e. SFC Nixon testified that he knew it was against policy and regulation to issue equipment without a hand receipt, but stated that "he didn't care," and that "it's just a bunch of Army crap anyway." He further stated that he considers SSG Ford a friend, and "didn't see any problem with loaning stuff out to a friend" [Exhibit E].

f. CPT Reagan, the Company Commander, testified that he had previously counseled SFC Nixon about appropriate property management and accountability procedures, including the explicit need for hand receipts [Exhibit E].

g. Accordingly, I find that SFC Nixon was grossly negligent in allowing these items to be taken from the supply room on a regular basis without properly prepared hand receipts signed by the recipients. SFC Nixon's actions further violated AR 735-5, paragraphs 2-1e and 2-1f, which state Government property will not be loaned or used for private purposes [Exhibit F]. The loss of accountability was the proximate cause of the loss of property.

h. Additionally, I find that there is insufficient evidence to hold SSG Ford or any of the dozens of other soldiers who utilized equipment from the supply room liable. There is no way to determine when the items were lost, or which items were used by each soldier.

i. The amount of the loss was depreciated by 5 percent for each year of service (15 percent) IAW AR 735-5, paragraph B-2b [Exhibit G].

4. Recommendation: Consistent with my finding that SFC Nixon's gross negligence was the proximate cause of the loss, I recommend that SFC Nixon, 123-45-6789, be held financially liable for the amount of \$1,507.78 [Exhibit G].

5. Point of contact is the undersigned at (804) 123-4567.

SHERLOCK HOLMES  
2LT, QM  
Financial Liability Officer

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Key to Exhibits:

A – Statement of SFC Nixon  
B – Cyclic Inventory Results  
C – Statement of SSG Ford  
D – Statement of SGT Carter  
E – Statement of CPT Reagan  
F – Excerpts of AR 735-5  
G – Computation of Cost to Government