

ARMY STANDARD TRAINING PACKAGE



ADMINISTRATIVE INVESTIGATIONS

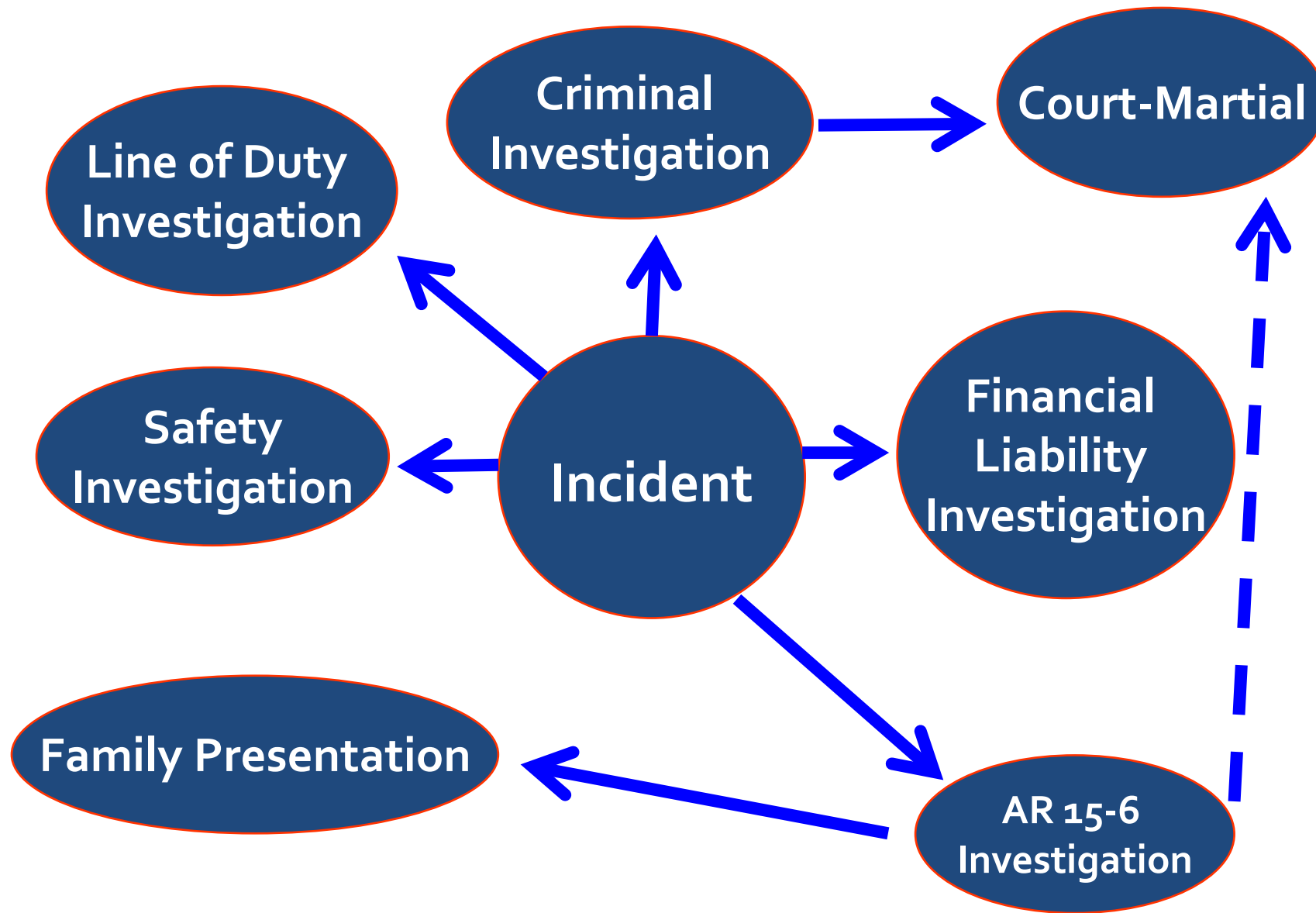
ADMINISTRATIVE INVESTIGATIONS

Commanders have the **inherent authority to investigate** any matter under their responsibility, unless otherwise prohibited or limited, if undertaken for the purpose of furthering the good order and discipline of their command

Keys to Success:

1. Do them
2. Do them right
3. Do them right away



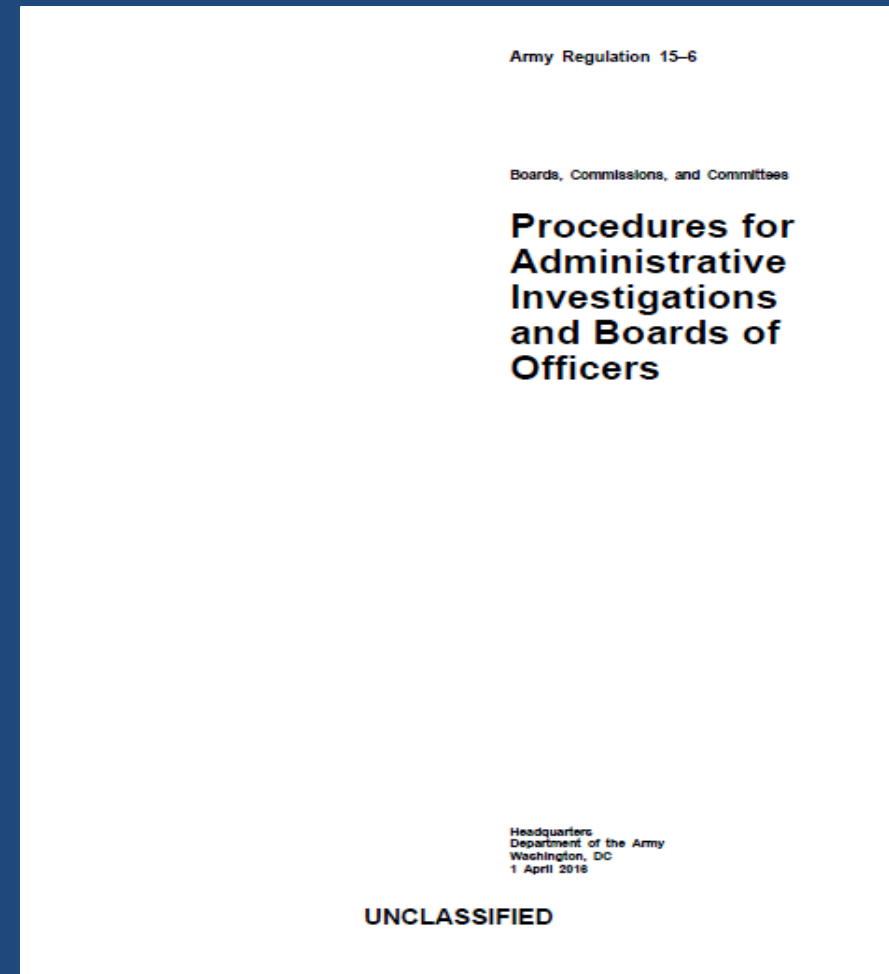


AGENDA/REFERENCES

- AR 15-6, *Procedure for Administrative Investigations and Boards of Officers*, 1 April 2016
- AR 385-10, *The Army Safety Program*, 24 February 2017
- AR 600-8-4, *Line of Duty Policy, Procedures, and Investigations*, 12 November 2020
- AR 638-34, *Army Fatal Incident Family Brief Program*, 19 February 2015
- AR 600-20, *Army Command Policy*, 24 July 2020

ARMY REGULATION 15-6

- Provides guidance on the conduct of investigations
- General and specific application to various investigations
- Use AR 15-6 when:
 - Whenever an appointing authority needs a complete investigative report containing facts and recommendations
 - When regulations require it



“WHEN REGULATIONS REQUIRE IT”

13–25. Use of an AR 15–6 investigation

a. There are five situations warranting an investigation performed per AR 15–6 in lieu of a financial liability investigation conducted under this regulation. These situations occur when directed by—

- (1) Other regulatory guidance.
- (2) A commander.
- (3) A financial liability investigation approving or appointing authority per AR 15–6.
- (4) The loss or destruction involves a controlled item with a CIIC of 1-6, 8, 9, N, P, Q, R, night vision devices, and navigation systems (for example, Global Positioning System).
- (5) Serial number changes for sensitive items will require the processing of a DD Form 200 and an AR 15–6 investigation if changes involve more than two characters.

- AR 735-5, Property Accountability Policies
- AR 638-8, Army Casualty Program

(1) The CDR having general courts-martial jurisdiction over the unit to which the casualty was assigned (or a higher authority designated by the combatant CDR or intermediate CDR authorized to make such designation) will initiate investigations (formal or informal) in accordance with AR 15–6 for all hostile deaths, deaths resulting from military-related accidents, deaths and injuries resulting from suspected friendly fire, and deaths resulting from suspected suicide.

AR 15-6 PROCEDURES

- A Commander's information tool to collect facts, make findings, and obtain recommendations
- Three procedures
 - Preliminary Inquiry
 - Assess the nature and size of a problem, identify witnesses, summarize initial statements and determine the necessity and scope of follow-up investigations.
 - Administrative Investigations
 - Flexible, less time and resource intensive investigation than a Board of Officers.
 - Board of Officers
 - More time intensive. Respondent designated and provided substantial due process rights.

WHO MAY CONVENE: THE APPOINTING AUTHORITY

- Board of Officers
 - GCMCA/SPCMCA
 - Any general/flag officer
 - Any commander, deputy commander, or special, personal, or principal staff officer in the rank of colonel (lieutenant colonel if assigned to a slot authorized a colonel)
 - GS-14 (or above) agency head or division chief
 - Principal Deputies, Assistant Deputy Chiefs of Staff, and Assistant Secretaries of the Army at HQDA

WHO MAY CONVENE: THE APPOINTING AUTHORITY

- Administrative Investigations & Preliminary Inquiries:
 - Anyone who can appoint a board of officers
 - Any commander
 - Special, personal, or principal staff officer or supervisor in the grade of major or above

SPECIAL SITUATIONS:

- Only a GCMCA or GO/FO in a command billet may appoint an AR 15-6 if:
 - Property damage of \$2M or more;
 - Loss or destruction of Army aircraft or missile;
 - Unmanned aircraft system with a repair or replacement cost of \$2M or more;
 - Injury or illness likely to result in death or permanent total disability;
 - Death of one or more persons.
- Combatant Commander or delegee for Friendly Fire incident investigations
- The next superior authority to the GCMCA is the appointing authority if:
 - Class A training accidents resulting in or likely to result in death, permanent total disability
 - Combat related deaths involving non- DOD personnel
 - Insider attack (green on blue)
- Appointing Authority can also be limited by local withholding policies

SPECIAL SITUATIONS: HOSTILE DEATH

- All hostile deaths must be investigated (AR 638-8)
 - Appointed by GCMCA but authority can be delegated to SPCMCA in writing (AR 15-6) but see DODI 6055.07.
 - CDRs must notify CMAOC of any/all investigations into deaths and any new information on circumstances of death (AR 638-8)
 - Investigation must be forwarded to Casualty and Mortuary Affairs Operation Center (CMAOC) upon completion
- Field grade officer must review all initial casualty reports (AR 638-8)

SPECIAL SITUATIONS: SUICIDE

- All suicides and suspected suicides must be investigated (AR 600-63 and AR 638-8)
- Appointed by GCMCA (AR 15-6)
- Investigation must
 - Coordinate with CID, medical examiner, mental health provider, Line of Duty officer
 - Use “Lines of inquiry” suggested questions as starting point
 - Provide recommendations to prevent future suicides

FRIENDLY FIRE

DODI 6055.07: A circumstance in which members of a U.S. or friendly military force are mistakenly or accidentally **killed or injured** in action by U.S. or friendly forces actively engaged with an enemy or who are directing fire at a hostile force or what is thought to be a hostile force

Units must report and investigate all suspected friendly fire incidents as soon as evidence leads personnel on the ground to believe that friendly fire may be involved

FRIENDLY FIRE (CONT)

- **Provide immediate telephonic notice** through the Casualty Assistance Center to the Army Casualty and Mortuary Affairs Operation Center (CMAOC)
- **Generate an initial (INIT) casualty report** through command channels to combatant commander
- **Initiate AR 15-6 investigation**
 - Appointed by Combatant Commander or his/her designee
 - Normally delegated to the GCMCA (CENTCOM)
 - Must be approved by Combatant Commander

FRIENDLY FIRE (CONT)

- **Contact the Combat Readiness/Safety Center** and initiate safety investigation - *subject to Combatant Commander discretion*
- **Contact the local CID Detachment**
- **Submit supplemental (SUPP) casualty report** when there is a substantial change to the initial report
- **Email monthly updates to CMAOC**
- Once approved by the Combatant Commander, **submit AR 15-6 proceedings to CMAOC**
- **Coordinate with CMAOC** to provide a presentation to the family for fatality cases

HOW TO APPOINT: THE APPOINTMENT MEMORANDUM

- Written appointment for administrative investigations and boards of officers
- Describe the facts as they are known at the time
- Be specific in what the investigating officer is to accomplish – scope!
- Give adequate guidance and special instructions

WHOM TO APPOINT: THE AR 15-6 INVESTIGATING OFFICER

- Grade
 - Commissioned/warrant officer
 - GS-11 and above
- Senior to person under investigation
- Impartial
- **Best qualified** by reason of education, training, experience, length of service, demonstrated sound judgment and temperament
- E-7 if military exigencies exist
- Assistant Investigating Officers are allowed

CONDUCTING THE INVESTIGATION

- Mandatory legal brief
- Must be thorough and impartial
- Using an investigative plan is a must
 - Who, what, where, when, why, and how
- Rules of evidence generally do not apply – **but evidence must be relevant and material**
 - Limitations: Privileged communications, evidence of polygraph only with consent of subject, no involuntary admissions, no bad faith searches, MRE 412
 - See AR 15-6, para. 3-7 for full explanation of evidentiary limitations

CONCLUDING THE INVESTIGATION

- Facts
 - Clear, concise, and readily deduced from the evidence in the record – should refer to a piece of evidence
- Findings
 - **Preponderance of the evidence** (more likely than not)
 - Findings must make common sense
- Recommendations
 - Consistent with the findings

LEGAL REVIEW

- Required for
 - All administrative investigations
 - Preliminary inquiries where follow-on adverse administrative action is contemplated
- Determine
 - Whether the proceedings comply with legal requirements and the appointment memo
 - What effects any errors have
 - Whether sufficient evidence supports the findings
 - Whether the recommendations are consistent with the findings



APPOINTING/APPROVING AUTHORITY ACTION

- Appointing/approving authority may
 - Approve as is
 - Disapprove
 - Return for additional investigation
 - Make exceptions and substitutions
- Recommendations
 - Treat just as findings: approving, disapproving, or substituting them as necessary
 - Become final agency decision once approved and thus may be released under the Freedom of Information Act
- Corrective action

FLAGS

- Mandatory for commander's investigations
 - Subjects of AR 15-6 preliminary inquiry, administrative investigation, CDR's Inquiry
- Failure to flag is a regulatory violation
- An administrative action, not punishment
- Impose within 3 working days of:
 - Suspect/Subject of investigation; or
 - IO later suspects witness of misconduct
- Remove within 3 working days of:
 - No adverse findings against Soldier;
 - CDR decides to take no action against Soldier; or
 - Different flag imposed



FOLLOW-ON ACTIONS

- Before adverse admin action based on 15-6:*
 - Subject is given notice and a copy of the report of investigation;
 - Subject has reasonable opportunity, no less than 10 days, to respond; and
 - Commander must consider response, if submitted in a timely manner, before taking adverse action
- Implement approved recommendations
 - Organizational corrections for the staff process

***Only when adverse action does not provide its own procedural safeguards or subject is a field grade officer**

REFERRAL OF ADVERSE INFORMATION

- Investigations containing adverse information regarding a FG officer must be referred to that officer advising the officer of:
 - Their ability to have a redacted copy and relevant portions
 - Right to remain silent
 - The adverse information may be uploaded into AAIP and provided to a promotion board
 - The approving authority will consider their response
 - At least **10 business days** to respond

AR 600-20, PARA. 4-19, THE ARMY HARASSMENT PREVENTION AND RESPONSE PROGRAM

Command Responsibilities

- Commanders will immediately report allegations of criminal behavior in violation of this paragraph to law enforcement.
- If not within the purview of law enforcement, command should investigate IAW AR 15-6

AR 385-10 SAFETY ACCIDENT INVESTIGATIONS

- Function of safety accident investigation is to **prevent future accidents**, it cannot be used to take adverse action
- Anticipate multiple investigations into same incident, each serving specific purpose
 - Safety, AR 15-6, criminal, line of duty



CLASSES OF ACCIDENTS

- **Class A:** Damage totaling \$2M or more; accidents involving aircraft*; injury/occupational illness resulting in fatality or permanent total disability (includes friendly fire incidents)
- **Class B:** Damage between \$500k - \$2M; injury/occupational illness resulting in permanent, partial disability; 3 or more personnel hospitalized in a single occurrence
- **Class C:** Damage between \$50k - \$500k; injury/occupational illness resulting in loss of one or more days of work beyond the day of injury/illness
- **Class D:** Damage between \$20k - \$50k; injury/occupational illness resulting in restricted work, transfer, medical treatment greater than first aid
- **Class E Ground Accident:** An accident in which the resulting total cost of property damage is \$5k-\$20k
- **Class E Aviation Accident:** An accident in which the resulting total cost of property damage is \$5k-\$20k
- **Class F Aviation Incident:** Aircraft turbine engine damage because of unavoidable internal or external foreign object damage, where that is the only damage

ACCIDENT INVESTIGATIONS

- TWO TYPES:
 - **Safety Accident Investigation**
 - IAW AR 385-10
 - Boards convened by GCMCA; Cdr, USARC (USAR); State Adjutant General (ARNG) for serious incidents
 - **Legal Accident Investigation**
 - IAW AR 385-10 and other regulations (AR 15-6)
 - Serious incident investigations convened by GCMCA due to the nature of the event

LEGAL ACCIDENT INVESTIGATIONS

- AR 15-6, AR 385-10, AR 385-40, and AR 638-34
- Required for
 - All Class A accidents, to include cases of friendly fire
 - As directed by the SJA IAW the claims regulation
 - On accidents where there is a potential claim or litigation for or against the government or government contractor
 - On accidents with a high degree of public interest or anticipated disciplinary or adverse administrative action
- **Used to obtain and preserve all available evidence for use in litigation, claims, disciplinary action, or adverse administrative action**

PRIORITY AND SHARING

- Priority: Criminal (CID), safety, legal (AR 15-6)
- Safety investigations will not be enclosed in any other report (not shared)
- But, safety center can share common-source documents, photographs, and those documents (other than witness statements) containing purely factual information (but not assessments/conclusions)
- AR 15-6 IO can and should share all information with CID and the safety center

AR 638-34 FAMILY BRIEFS

- Purpose of the brief is to provide results of fatal accident investigations and confirmed cases of suicide to the next of kin
- Must be conducted within 30 days after completion of investigation
- Conducted by an O6 in chain of command
 - Chaplain, Casualty Assistance Officer
 - Others as needed (PAO, SJA, Medical, Interpreter)

AR 600-8-4 LINE OF DUTY INVESTIGATIONS

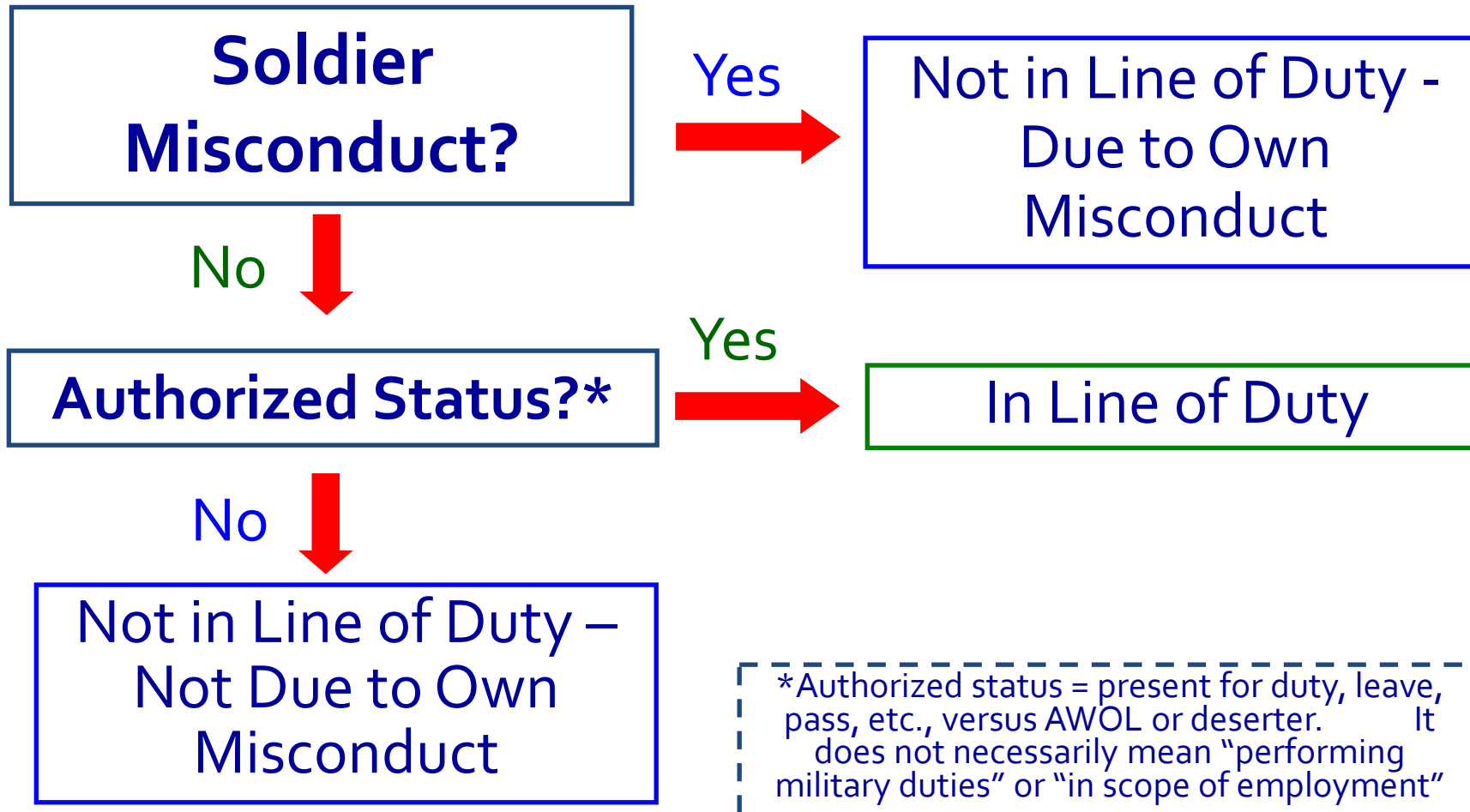
- Line of duty determination required when service is interrupted by injury, disease, or death
- Purpose is to protect the interest of the individual and the United States



THREE POSSIBLE OUTCOMES (AND CONSEQUENCES)

- In line of duty (ILD)
 - May receive - Army Disability Retirement, Separation Compensation, DVA Compensation & Hospitalization, Incapacitation Pay (USAR & ARNG)
- Not in line of duty – Not due to own misconduct (NLD-DOM)
 - May lose - disability retirement, separation compensation, DVA disability or hospitalization, civil service preference
- Not in line of duty – Due to own misconduct (NLD-NDOM)
 - Must make up lost days, lost days excluded from longevity and retirement pay computations, forfeit pay (for days lost due to disease resulting from intemperate use of drugs/alcohol), loss of disability retirement and severance pay, potential loss of DVA benefits (DVA determination)

LINE OF DUTY ANALYSIS



UNLESS SM IS MENTALLY UNSOUND! SEE AR 600-8-4, PARA. 2-5a!!!

PRESUMPTIONS

- Presume ILD without investigation:
 - Disease (exceptions)
 - Enemy action or terrorist attack
 - Death from natural causes
 - Death as passenger on common commercial carrier or military aircraft
 - Superficial injuries with no lasting significance

See AR 600-8-4, para. 2-2

INFORMAL INVESTIGATION

- Informal: Company commander performs and signs **DA Form 2173** and provides to appointing/approving authority
 - No misconduct or negligence suspected
 - Medical Treatment Facility (MTF) rep and commander sign a DA Form 2173
 - Appointing/Approving authority: Special Court-Martial Convening Authority
 - Can only result in a finding of ILD or EPTS
 - Requires a legal review

FORMAL INVESTIGATION

- **Formal**: IO appointed, findings and recommendations on **DD Form 261**
 - Strange or doubtful circumstances
 - Injury or death involving drugs or alcohol abuse
 - Self-inflicted injuries/suicide
 - Injury/death while AWOL
 - See para. 2-2 for full list
 - Appointing authority: Special Court-Martial Convening Authority
 - Approving authority: General Court-Martial Convening Authority

FORMAL INVESTIGATION (CONT.)

- Soldier presumed in line of duty
- Contrary finding must be rebutted by substantial evidence, under a preponderance standard
- Soldier not required to make a statement against interest
- Soldier afforded notice and opportunity to rebut adverse findings
- Legal review for all formal investigations

QUESTIONS?