



7th Army Training Command Legal Assistance Information

FLIPL

(Financial Liability Investigation of Property Loss)

Please note that this Information Paper only provides basic information and is not intended to serve as a substitute for personal consultations with a Legal Assistance Attorney.

1. What is a FLIPL?

The Army investigates the causes of lost, damaged, or destroyed property, to account for the losses on property books. The results of these investigations operate like a voucher to the property book. These command investigations also evaluate ways to improve systems, and whether a Soldier should be financially responsible for the loss.

2. Who conducts the FLIPL investigation?

An Investigating Officer (IO), appointed by the chain of command of the responsible Soldier, conducts a thorough investigation to determine the cause of the property loss. The Investigating Officer gathers the facts and then determines what was the cause of the loss, and if someone could be financially responsible. Once a determination is made, the Investigating Officer recommends whether or not that individual should be held financially liable. That recommendation goes to the Approving Authority, which may be different from the Appointing Authority, dependent upon the type and value of the property at issue. Because the IO only recommends findings of fact and a limited recommendation of liability, the Approving Authority is the ultimate decision maker on whether someone should be financially liable and for what amounts, within the confines of Army Regulation (AR) 735-5. A General Officer is the Approving Authority for all sensitive items and high-value property.

3. What factors determine if I am financially liable for lost, damaged, or destroyed property?

If your negligence caused a loss to the Army and was the proximate cause of the loss, you may be held financially liable. The IO must also determine there was an actual loss to the government, and determine who was responsible for the item. Deliberate or willful actions resulting in the destruction or loss of government property can result in UCMJ action. If investigated for a loss, but not actually responsible, you need to document any evidence in support of you not being the responsible party to provide to the IO, with the guidance of a Legal Assistance Attorney. This submission may include hand-receipts, photos, or statements of other parties with information as to the loss. You must be both negligent and the proximate cause of the loss to be found liable. The burden of proof for these investigations is lower than a criminal proceeding. The command investigation's findings must only show a preponderance of the evidence to hold someone liable. This sometimes equates to a more-likely-than-not standard, but is a much lower standard than a beyond-a-reasonable-doubt standard.

4. What is negligence? What is proximate cause?

The IO is responsible for addressing 4 elements: Loss, Responsibility, Negligence and Proximate Cause. Meaning, there must have been a realized loss to the government; the liable Soldier was responsible for the property in one of the responsibility capacities defined by DA Pam 735-5 (supervisory, direct, custodial, command), in addition to being negligent and the proximate cause of the loss. However, negligence and proximate cause are often critical pieces to a finding financial liability.

A loss is damage to equipment, a total destruction of an item, or a complete loss of equipment. This is relevant when "lost" property is found in the midst of an ongoing investigation. Responsibility is the obligation of an individual to ensure Government property and funds entrusted to their possession, command, or supervision are properly used and cared for, and that proper custody, safekeeping, and disposition are provided. Lack of responsibility may support a finding against negligence.

Negligence, under Army Regulation 735-5 and corresponding DA Pamphlet (DA Pam) 735-5, is a failure to fulfill a responsibility or duty. It is often when someone knew better, or should have known better, and continued to act out of accordance with that knowledge. Negligence alone is not enough for financial liability—there is no strict liability standard.

Proximate cause is the cause, which, in a natural and continuous sequence, unbroken by a new cause, produces loss, damage, or destruction, and without which, the loss, damage, or destruction would not have occurred. Common sense and good judgment should always be, but often are not, used in determining the proximate cause. By example, although the speed limit in a particular place may be 30 mph, a person cannot

always drive at that speed. At times the street may be so crowded, or so icy that even 20 mph is a reckless and excessive rate of speed. Refer to DA Pam 735-5 for specific examples of negligence and proximate cause.

5. How much can I be required to pay?

You may be held liable for the entire monetary loss to the government, dependent upon rank and position, i.e. if you were the commanding, responsible party for the equipment and were found liable for the loss, you could be responsible for amounts exceeding your base pay. For Soldiers not acting as an accountable officer, this is typically a maximum of a month's base pay. Dependent upon the type of property, the item's value is typically calculated using the item's current fair market value and depreciation under the Army's depreciation standards. Generally, the amount of liability cannot exceed one month's pay base for Soldiers; however, you can be charged the full amount under certain circumstances, like for a finding of willful misconduct. Base pay is determined at the time of the incident, not when actual liability is recommended. Importantly, if considered for liability, you can explain potential mitigating factors to the approving authority before their final determination.

6. What is a rebuttal statement?

You have the right to submit a rebuttal statement on your own behalf. However, there is a very short timeline in which you must respond. Once notified of the investigation, you will be given a timeline based upon varying considerations and that is a strict deadline.

Even when there is sufficient proof of your negligence and proximate cause, the Approving Authority may be persuaded by your rebuttal matters. This is your chance to provide additional proof of your lack of negligence and adherence to standards. But most importantly, this is your chance to provide to the Approving Authority any mitigating factors. This is important in every FLIPL, whether negligent or not. Mitigating factors can include ones of your following a direct order, reasons you cannot afford the financial impact of the outcome of a FLIPL, and any limitations in your life or your families life that creates such a burden that this distracts from the overall mission. Mitigating factors may also include your age, rank, lack of experience, lack of training, command failures or the responsibility of other parties. Effective factors often include operations in blackout conditions, poor weather, following direct orders, or a lack of training due to no fault of your own.

There is a balance to strike: laying blame or not taking responsibility can also present its own set of obstacles sometimes. This is where a Legal Assistance Attorney can assist you in editing and polishing a final rebuttal for presentation to your Approving Authority.

Based upon the volume of investigations a commander must review, brief and concise memos are best. Depending upon the complexity and size of an investigation, responses will vary. Powerful exhibits such as additional witness statements, extenuating circumstances of a Soldier's financial stability, or photos may influence an Approving authority to lower the amount of recommended liability or release a Soldier for financial liability altogether.

7. What happens after the Approving Authority assigns liability?

If found to be liable for the loss of government property by the Approving Authority, you will be charged for the loss and the amount debited from future paychecks. If the amount is substantial, immediately contact finance about payment plan options. Even after charged for the loss, it is still possible to seek reimbursement for part or all of the money through an appeal to the Army Board for Correction of Military Records (ABCMR). You are required to exhaust all your appeal options before going to the ABCMR so speak with a legal assistance attorney about this and other appeal options if found liable by the Approving Authority.

Attached is a rebuttal example. Draft your own rebuttal with your unit's information included, and bring all additional photos or exhibits you wish to include with the submission to your Legal Assistance appointment.



DEPARTMENT OF THE ARMY
SEVENTH ARMY TRAINING COMMAND
OFFICE OF THE STAFF JUDGE ADVOCATE
APO AE 09114-8130

AETT-JA-LA

16 April 2019

MEMORANDUM FOR 2LT ____, Investigating Officer, [*Unit Information, Tower Barracks, APO AE 09114*]

SUBJECT: PFC Joe Smith, Rebuttal Matters, Financial Liability Investigation of Property Loss (FLIPL) WARJFF-19-173ABN-115

1. Purpose. I am a legal assistance attorney writing on behalf of PFC Joe Smith, whom I represent for the purpose of this FLIPL rebuttal. I respectfully request relief from the liability recommended against my client due to [*a lack of mitigating circumstances that warrant reconsideration of the recommended liability*] / [*my client's due diligence and prudent actions that did not cause the loss or damage*]. I request a [*reduced amount of liability*] / [*relief from liability in total*] from the original \$2,307.00, and in the alternative, a payment plan that will ease the financial burden imposed on PFC Smith.

2. Factual Background.

a. On 26 February 2019, PFC Smith was tasked with delivering winter equipment to the Central Issuing Facility (CIF) on Rose Barracks. PFC Smith used the BN TMP, a cargo van, to deliver the equipment to CIF. PFC Smith was unable to find a Soldier present in the motor pool to act as his ground guide or truck commander. PFC Smith put the van in reverse and began backing it up to the motor pool loading dock. PFC Smith used the side-view and rear-view mirrors to assist in backing up the van, and was under the impression that the van came equipped with backup sensors that would alert him if he got too close to the loading dock. The van did not have any such sensors, and the van struck the loading dock causing the incident damage.

b. [*Insert any facts that can help your attorney understand what happened. Where you negligent? Who was negligent? Who was there? What could have stopped the event? Were you ordered by leadership to do something? Were you being rushed? Were the road conditions poor? Were you ordered to operate in blackout night conditions? Were ground guides properly used? Were you understaffed? Had you been allowed rest periods? What was the optempo? What do you know about the piece of property loss/damaged? Do you have cost estimates from the S4 as to replacement or repair values?*]

c. [*Insert considerations of age, rank, and experience: were you tasked to do something outside the scope of your training?*]

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3. Mitigating Circumstances. PFC Smith understands the liability imposed against him and assumes responsibility for the damage to the vehicle. In light of the mitigating circumstances presented below, PFC Smith respectfully requests a reduced amount of liability and/or a payment plan that will allow him to pay the debt over time in installments.

a. Family support. PFC Smith has a wife and child who depend on him for emotional and financial support. He is also of limited income and would be substantially burdened in his obligations to support his family should the Army attempt to recoup one month's total pay from him. The Army suffers from no such financial hardship, and is not required under AR 735-5 to impose financial liability in order to satisfy the legal requirements of this investigation. However, PFC Smith understands and acknowledges that he is at fault, and is willing to pay at least a portion of the recommended liability.

b. Payment plan. Regardless of the amount of liability ultimately imposed upon PFC Smith, he respectfully requests that the approval authority grant PFC Smith a payment plan that would ease the financial burden of satisfying the debt. In light of PFC Smith's family and financial situation, losing an entire month's base pay all at once would be a great burden on him. Therefore, he requests that a payment plan be negotiated that would allow him to make modest monthly payments over a period a time until the debt is satisfied.

4. Conclusion. PFC Smith recognizes that as the driver of the TMP, he was ultimately responsible for it. However, due to the aforementioned mitigating circumstances, I respectfully request relief from liability in the form of a reduced amount along with a mutually agreeable payment plan.

5. Point of contact for this memorandum is the undersigned at DSN 314-569-05XX or your.attorney's.email@mail.mil. *[Limit your response to 2-3 pages so your attorney can help edit it to no more than 2 pages.]*

4 Encls

1. Sworn Statement from Other Witness
2. Photos of Accident Scene
3. Field Manual Supporting Your Actions
4. Exhibit of Conditions/Other Factors from Para. 2. above.

YOUR ATTORNEY

CPT, JA

Legal Assistance Attorney