

FINANCIAL LIABILITY INVESTIGATIONS

I. INTRODUCTION - In today's modern Army, soldiers are faced with the great responsibility of safeguarding the use, custody, and control of valuable government property. From TA-50 to a tank, if you are responsible for government property that is damaged, destroyed, or lost, you may be the subject of a Financial Liability Investigation Property Loss (FLI) to determine if you should be held financially liable (formerly known as the Report of Survey). For you to be held liable, the FLI must show that your willful misconduct or negligence proximately caused the property to be damaged, destroyed or lost. Army Regulation (AR) 735-5, Chapter 13, governs the FLI system. The regulation can be found at www.usapa.army.mil

II. RIGHTS IF FLO RECOMMENDS LIABILITY - If the Financial Liability Officer (FLO) recommends that you should pay for the loss or damage, the FLO must allow you to examine the entire Financial Liability Investigation investigation and to submit a rebuttal statement. Additionally, the FLO must inform you of your right to inspect and copy Army records relating to the survey, to submit statements or other rebuttal evidence and to obtain legal advice from a Judge Advocate. You must submit your evidence to the FLO within certain time limits.

A. Time Limits - The time limits for submitting rebuttal statements vary depending on how the FLO notified you. If you were notified in person, then you have 7 calendar days from that date to submit your rebuttal. If you are notified by mail and you live in the same country as the FLO, then you have 15 days from the date the survey was mailed to respond. If you are in a different country from the FLO, you have 30 days from the date the survey was mailed to respond.

B. Legal Assistance - You are entitled to legal assistance for the review and assistance of your rebuttal. You must gather your evidence and prepare your rebuttal prior to visiting the Legal Assistance Office. Please bring in a hard copy of your rebuttal. **FOR AN APPOINTMENT CONTACT THE LEGAL ASSISTANCE OFFICE at 242-5084.**

C. Content of Rebuttal Statement - To properly rebut the FLO's recommendation, you must know the basis for that recommendation. Therefore, it is vital that you carefully read the entire Financial Liability Investigation and examine all the evidence that is attached. In order for the FLO to recommend liability, he or she must find, based on the evidence in the report, that you willfully or negligently caused the property to be lost or damaged.

1. *Willful Misconduct* – To find you liable, the FLO must establish that your intentional, wrongful, or unlawful act or failure to act resulted in loss of

Government property.

2. Negligence and Proximate Cause – To find you liable, the FLO must establish that you were negligent and that your negligence was the proximate cause of the loss. A four-part test must be followed before determining financial liability. 1) You must have a DUTY to care for the property. This duty can arise in numerous ways such as: signing for the property; supervising persons using the property; custodial responsibility; or having physical possession of the property. 2) You must have BREACHED the above-described duty of care. Whether you have breached the duty of care depends upon the circumstances in each case. The standard that is to be applied is whether you acted in a manner that a reasonable person would have acted if faced with the same situation. Acts or omissions can cause breaches. 3) Your negligence (breach of duty) was the PROXIMATE CAUSE of the loss. The breach of the duty cannot be merely a potential factor in the cause of the loss, but rather the act or omission which actually caused the loss. 4) There must be a LOSS to the government, which includes loss of accountability. The FLO may also determine gross negligence resulted in the loss. To find gross negligence, the FLO must find in addition to breaching the four-part test above, your conduct was an extreme departure from the course of action to be expected of a reasonably prudent person, all circumstances being considered. A gross negligent act is characterized by a reckless, deliberate, or wanton disregard of the foreseeable consequences.

2. Evidence - You should gather any documents, photos, statements, and other evidence that will support your position. Write a statement that explains why the FLO's recommendation is erroneous and why your evidence supports your position. You should avoid including extraneous issues or emotional comments within your rebuttal.
3. Rebuttal. Simply stick to the facts.

III. PROCESSING FINANCIAL LIABILITY INVESTIGATION.

A. The *FLO* must consider your rebuttal statement. If the FLO believes that you are still liable, he or she forwards the report to the Staff Judge Advocate for legal review. If it is determined to be legally sufficient then it is forwarded to the Approving Authority, who then makes the decision whether or not to hold you liable.

B. The *Approving authority*, the garrison commanders for property losses within their command, (See para 13-17, AR 735-5 for more details) will notify you in writing if he or she intends to hold you liable. This letter will also inform you of the following rights:

1. To receive legal advice from the local Legal Assistance Office.

2. To inspect and copy Army records relating to the survey.

3. To request reconsideration based on legal error. The request for reconsideration must be requested within 30 calendar days from the date the commander notified you. Collection from your pay is stopped pending the outcome of your request for reconsideration. The request for reconsideration should initially be submitted to the Approving Authority. If liability is still recommended the report will be submitted to the Appeal Authority. (See para 13-52, AR 735-5 defining "Appeal Authority"). He or she will then act on your request for reconsideration.

4. To request extension of the collection period.

5. To request remission or cancellation of the indebtedness under the provisions of AR 600-4 (enlisted personnel only). However, you must request this before the entire amount is collected from your pay. Further collection action is stopped pending the outcome of your request for remission or cancellation.

6. To submit an application to the Army Board for Correction of Military Records (ABCMR) under the provisions of AR 15-185. Requests to the ABCMR must usually be filed within 3 years of discovery of the grounds for the request.

If you do not exercise the above rights or if you are unsuccessful, then the amount you owe will be withheld from your pay within 30 to 60 days.

IV. AMOUNT OF LIABILITY - The government can require you to pay the entire amount of money lost by the government. The loss is determined using the lost item's current fair market value and depreciation. IAW 735-5, para. 13-32c(4), you will not pay more than one month's base pay, unless you are fall into one of the following categories: accountable officers; persons losing public funds; Soldiers losing personal arms or equipment; or persons who lose, damage, or destroy government housing (Privatized housing is not government housing), furnishing or equipment in government housing due to gross negligence or willful misconduct. Base pay is determined at the time of the incident, not when the Financial Liability Investigation is completed.

THREE SAMPLE LETTERS OF REBUTTAL FOLLOW:

SAMPLE FLI REBUTTAL #1
[Unit Letterhead]

[Your unit's office symbol] (735-5)
[Date]

MEMORANDUM FOR [Name of Financial Liability Officer], [FLO's unit]
Name and address of installation

SUBJECT: Rebuttal Statement, Financial Liability Investigation No. ____ Your rank and name, SSN, Amount of money charged

1. **PURPOSE.** Pursuant to AR 735-5, chapter 13, I am submitting this Rebuttal Statement to the recommendation of liability against me in Financial Liability Investigation Number xxxxx. The financial liability officer recommended that I pay \$120.62 for the loss of my TA-50.

2. **FACTS.**

a. [Explain what happened. Do not discuss who you think is at fault] . This Financial Liability Investigation resulted when I was injured on an airborne operation on 26 July 2007. I was knocked unconscious after executing a faulty parachute landing fall. In fact, I was carried from the drop zone by a team of medics. After my TA-50 was removed from my mangled, broken body, I was transported to Womack Army Hospital. After forty-eight hours of trauma surgery, during which time physicians determined they had the technology to rebuild me, I was released onto convalescent leave.

b. Before going on leave, I telephoned my unit. When I stopped at my unit, I saw my TA-50 on the floor of my room. Unfortunately, the TA-50 that I saw was not mine. I later learned that while I was at the hospital, my equipment was stored in the Operations office, and then transferred to my room. Because I was hurt, and somewhat dazed, my friend put all of the TA-50 in my wall locker.

c. Due to the severity of my injuries, I took fourteen days of convalescent leave, instead of the planned seven days. Upon my return, I inspected my TA-50. I immediately recognized that some of the equipment was not mine. Somehow, the wrong LBE, ballistic helmet, and goretex gloves were mistakenly placed in my ruck sack.

3. **NEGLIGENCE AND PROXIMATE CAUSE.** [Many of the sections below can be copied into your rebuttal statement] . The financial liability officer alleged that I was negligent. He has not, however, proven any of the elements required for such a conclusion. Without proof of these elements, there is no theory of liability upon which I can be held liable. Despite this failure, I will address each

element below.

a. Standards: Army Regulation 735-5, paragraph 13-28(b)(1) states that before a person can be held financially liable, the facts must show that he or she violated a particular duty of care toward the property through negligence or willful misconduct. Further, the negligence was the proximate cause of the loss.

b. Army Regulation 735-5, paragraph 13-28(b)(2) defines simple negligence as "the absence of due care, by an act or omission of a person which lacks the degree of care for the property that a reasonably prudent person would have taken under similar circumstances to avoid loss, damage, or destruction to the property." Before I can be found liable, I must be found negligent. My negligence must have also been the proximate cause of the loss or damage.

(1) Responsibility: I was not responsible for the TA-50 at the time of loss. I agree that at one time I possessed the TA-50. Due to my condition following my "burn-in," however, I could not maintain positive control of my equipment. Because I was unconscious, it was the responsibility of the drop zone personnel to collect my TA-50. Furthermore, the financial liability officer was wrong to focus on my responsibility to account for the TA-50 upon my return from the hospital. The drop zone personnel had already lost my TA-50 by the time I arrived at the hospital. Thus, when I returned from the hospital, although bionic and fit to fight, it was impossible for me to account for my equipment. Also, even though the doctors had the technology to rebuild me, making me both stronger and faster, when I left the hospital I was dazed and exhausted. That is why I was ordered on convalescent leave (see Enclosure 2). I am enclosing copies of my medical files as further proof of my condition at that time (see [Your units office symbol] (735-5)

SUBJECT:

Enclosures 3 and 4). Clearly, I acted responsibly at all times, including when I secured the equipment until I could properly take accountability. Therefore, since I was not responsible at the time of the property loss, I cannot be held liable.

(2) Culpability: I was not culpable for the loss of the TA-50. According to Army Regulation 735-5, para 13 for a person found to have personal responsibility for property to be liable, he must fail to "exercise reasonable and prudent actions to properly use, care for, and safeguard all Government property in his or her physical possession." I did everything a reasonable and prudent person would have done under similar circumstances. Since I was unconscious, I could do nothing. Furthermore, when I returned from the hospital, my friend locked all of my TA-50 in my wall locker. I had no reason to believe the TA-50 in my ruck sack was anyone's other than mine. I did everything that could have been expected of me. As such, I was not culpable and request that this recommendation be dismissed.

(3) Proximate Cause: Army Regulation 735-5, para 13-28c states that proximate cause is "the natural and continuous sequence [of events] unbroken by a new cause [that] produced the loss." In section 26, the financial liability officer stated that he based his findings on the fact that twelve days passed until I gained positive accountability of my equipment. As such, the financial liability officer must show that but for my not taking accountability of the equipment upon my return from the hospital, somebody else would not have lost my equipment. There is no causal connection between the two events. My equipment was lost by someone else at the drop zone before I returned from the hospital. Additionally, my equipment was locked in my wall locker, so the same equipment was there when I returned from leave. Plainly, the proximate cause of the loss was sloppy accountability procedures by the rappel tower personnel. When they gathered equipment belonging to injured jumpers, they likely tossed it into the back of a truck. All the equipment was probably switched at that time. Thus, since my actions did not proximately cause the loss, this recommendation should be dismissed.

4. **CONCLUSION.** The Financial Liability Investigation is legally insufficient. The financial liability officer cannot prove that: I was responsible at the time of loss, I was culpable, or I proximately caused the loss. Further, the loss was improperly calculated. Absent proof of these essential elements of negligence, I cannot be held liable for the loss. If I am found liable, however, I request the amount of liability be canceled due to personal financial problems. If this is impossible, I request the amount be collected over a twelve-month period.

[Your Name]
[Your Rank], U.S. Army

4 Encls

1. Financial Liability Investigation No
2. Nursing Discharge Summary
3. Medical Record Dated _____
4. Health Record

**SAMPLE 2 FLI REBUTTAL
(HAND RECEIPT HOLDER FOR LOST PROPERTY)**

[Letterhead]

1. Purpose.

2. Facts.

a. On 17 June 2007, I received eight M88 equipment bags for the four battalion M88 Medium Recovery Vehicles from X. I took the bags to the motor pool and secured them in the storage room. Two bags were to be issued to each M88 crew chief. During this time period, the M88s were being moved from the line batteries to the Service Battery, Battalion Maintenance Section. When I received the bags from, the M88s had not yet moved to the Battalion Maintenance Section. Therefore, I could not issue the bags immediately because I did not know who would be occupying the M88s. After the vehicles arrived in our section, there were on going discussions about changing personnel on the vehicles. I did not attempt to issue out the bags until all personnel movements had been made and the bags were needed for a field exercise.

b. The equipment bags were secure in the storage room. In July 2007, the welding shop and the storage room were consolidated into one room. The equipment in the storage room was moved to an enclosed area in front of the motor pool, where it is presently located. I did not participate in the movement of equipment. After the move had been completed, I checked on the equipment for which I was accountable. The bags were located on the top shelf of the cabinet in the center of the rear cage. corroborated the fact that eight bags were in the new storage area after the welding shop and storage room had been consolidated, Exhibit F.

3. Negligence.

a. I properly safeguarded the bags by placing them in the storage room. IAW AR 735-5, Chapter 13, I am not automatically liable for the loss of equipment for which I am the hand receipt holder. I can be held liable for the loss only if I was negligent with respect to the property. The storage room was locked on the outside double doors along with another lock on the inside cage door. The storage room also met the required standards IAW AR 190-51, Physical Security. The storage room not only held the bags, but also contained the welders' equipment, toolboxes, the Herman Nelson Heater, and other shop equipment. Under AR 190-51, para. 3-22c, portable hand tools, tool sets or kits, and shop equipment should be secured in a locked building or room meeting the requirements for a secured storage structure. The storage room met those requirements. Additionally, the keys to the storage room were controlled. The keys to the locks of the room were stored upstairs in the lock box behind the

Battalion Motor Sergeant's desk. The primary key custodian was XX and the alternate was XX. To control access, only the battalion maintenance personnel were authorized to sign out the keys for use of the steam cleaners stored inside the storage room.

b. I was not negligent by securing the bags in the storage room. AR 735-5 requires proof that a soldier was negligent before he can be held liable for lost property. Paragraph 13-28(b)(2) defines simple negligence as "the absence of due care, by an act or omission of a person which lacks the degree of care for the property that a reasonable, prudent person would have taken under similar circumstances, to avoid loss, damage, or destruction to the property." A reasonably prudent person is an average person, not a perfect person. The bags were not left out in an open area, they were secured under lock and key. The area was secure when the bags were stored there. Furthermore, the storage room continues to be operated in the same manner today, and houses government equipment and tools.

[Your units office symbol] (735-5)
SUBJECT:

c. A reasonably prudent person would have waited to issue the bags to the crew chiefs of the M88s after the personnel changes on the M88s were complete. The bags were not being used by the M88s because we were not in the field during this time period. In September, when we were preparing to go to the National Training Center, and after all the personnel changes had been made, I went to the storage area to issue out the bags for use by the chiefs of the M88s.

4. Proximate Cause.

a. I cannot be held liable for the loss of the bags in the storage room because I was not the proximate cause of the loss. IAW AR 735-5, para. 13-28(c), even if I was negligent in failing to issue the bags sooner, to be found liable my negligence must have been the proximate cause of the loss; to be liable, whatever I did or failed to do must have been the actual cause of the loss to the government. The mere fact of loss does not establish proximate cause. The Survey must prove that some act or omission of mine constituted negligence, and that same act or omission was “the cause that, in a natural and continuous sequence, unbroken by a new cause, produce[d] the loss or damage, and without which the loss or damage would not have occurred.” AR 735-5, Appendix C-11.

b. The bags were properly secured and were moved to the new storage area. X stated that when he was cleaning the storage room, he found the box with only two of the bags inside it, Exhibit C. The bags must have been stolen for the loss to have occurred. The proximate cause of the loss is the person or persons who stole the bags. The bags were properly stored pursuant to regulation.

4. Conclusion ...

2 Encl
1. Exhibit C, FLI No. ___
2. Exhibit F, FLI No. ___

[Your Name]
[Your Rank], US Army

**SAMPLE 3 FLI REBUTTAL
(TRAFFIC ACCIDENT)**

[Letterhead]

1. **Purpose....**

2. **Facts....**

3. **Negligence.** I was not driving negligently. According to paragraph 13-28, AR 735-5, “[b]efore a person can be held financially liable, the facts must show that he or she, through negligence or willful misconduct, violated a particular duty involving care of the property... Whether a person’s acts or omissions constitute negligence depends on the circumstances of each case. Negligence under some circumstances may not reflect negligence under other circumstances.” The FLO must also consider when determining negligence, “the person’s age, *experience*, physical condition, and special qualifications.”

a. The FLO based his conclusions on the accident occurring at 1700. He states, “When reenacting the accident, (at 1655 according to exhibit K) the sun was not in SPC s or MAJ s eyes....It wasn’t until approximately 1730 that the sun was shining in the reenactor’s eyes.” In my first written statement (Exhibit I) I wrote that I had been operating at 1700 and had just finished spraying down 1st platoon’s culvert site. I then sprayed SGT SOLDIER got back in the truck, we drove down past the culvert to turn around, and were headed back toward Mr. X’s house when the accident occurred. This all took time, so to think the accident occurred exactly at 1700 is an error. Additionally, the sun sets at different times on different days.

b. I don’t feel enough emphasis was placed on the sun affecting the accident. In exhibit L, SPC XX stated, “at approximately 1720 hours, the sun is in the windshield, creating a glare. At this time I asked YY for his construction helmet. When I put on the construction helmet, the sun was in my eyes. I lowered my head to avoid the sun....At approximately 1730, YY and I went across the culvert, and I told him that the sun was affecting my driving.” Please note the position of the sun in the various time differences in exhibits M through P. As with SPC XX, the sun did affect my driving that day.

c. Just before the accident occurred, I was listening to SGT SOLDIER as he instructed me on what we needed to do next. I was not engaged in conversation with him, and he was not distracting me from the road. He was simply doing his job as an NCO. I say this to refute the finding that my glancing at him to acknowledge his instruction was the proximate cause of the accident. (See Findings) Rather, it was the sun, dust, and my lack of experience hauling a water distributor that caused the accident. Again I will remind you that this was my first time hauling a water distributor, I was not licensed on that piece of

equipment, and I was working in a training environment under the supervision of SGT SOLDIER. In a training environment there must be room for mistakes, or it would not be training. If our supervisors were not willing to accept the risks as well as the responsibility for this training, then I should not have been assigned to operate in the dangerous and challenging conditions of the El Indio project site.

d. Finally, the suggestion that I was “driving too fast for visibility conditions” (See Findings) just isn’t proven. First, there weren’t any skid marks evidencing speeding. Additionally, it is common knowledge that the M920 does not have rapid acceleration from a stationary position. The FLO states that the turn around point and the culvert were only 500 feet from each other. (Exhibit K) After turning the truck around and getting back on the road, I had neither the distance nor the time to be speeding.

4. Argument.

a. Respectfully request that I not be held financially liable. I have been operating the M920 since September of 1996 without any accidents or speeding tickets. I was also recognized for my driving ability during the Advanced Warfighting Experiment at the National Training Center in May 1997, at which time I received an Army Achievement Medal. To add to my untarnished driving record, I have never received so much as a negative counseling statement during my entire 2 1/2 year term of service. I say this not to boast, but rather to explain that I am not a reckless driver deserving of having one months pay taken away from me. The end result is that I am sorry that I was in an accident. The thought that I could have really hurt or even killed someone else or myself has shaken me up much more than losing a paycheck. Please consider this before you decide my financial liability.

5 Conclusion...

8 encl
List them

[Your Name]
[Your Rank], US Army

**FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE
OFFICE at 242-5084**