



U.S. ARMY OKINAWA

☆ TORII STATION ☆



LEGAL ASSISTANCE

• 644-4332 / 4742 • BUILDING 218, ROOM 220 •

FLIPL REBUTTAL CONSIDERATION

Adapted from an article by Fort Lee CSD

You received notification that you may be held financially liable for damage to government property or for property that can no longer be accounted for. The FLIPL investigating officer (FLO) says you have a chance to submit a rebuttal. What do you do? Ask yourself these questions.

1. What was your duty in relation to the property (responsibility)?

The FLO will likely refer to your duty in terms of what type of “responsibility” you had for the property. AR 735-5, para 13-29a, identifies five types of responsibility:

- ❖ Command responsibility: The obligation of a commander to ensure all Government property within their command is properly used and cared for, and that proper custody, accountability, safekeeping, and disposition of Government property are provided.
- ❖ Supervisory responsibility: The obligation of a supervisor to ensure all Government property issued to, or used by its subordinates, is properly used and cared for, and that proper custody, safekeeping and disposition of the property are provided.
- ❖ Direct responsibility: The obligation of a person to ensure all Government property for which they have receipted is properly used and cared for, and that proper custody, accountability, safekeeping, and disposition are provided.
- ❖ Custodial responsibility: The obligation of an individual for property in storage awaiting issue or turn-in to exercise reasonable and prudent actions to properly care for, and ensure proper custody, safekeeping and disposition of the property are provided. Custodial responsibility results from assignment as a supply sergeant, supply custodian, supply clerk, or warehouse person.
- ❖ Personal responsibility: The obligation of a person to exercise reasonable and prudent actions to properly use, care for, safeguard and dispose of all Government property in their physical possession. It applies to all Government property issued for, acquired for, or converted to a person’s exclusive use, with or without receipt.

2. What did you actually do in relationship to the property?

The type of responsibility you had for the property will determine your duty toward the property in terms of accountability or safekeeping. The analysis of whether you were negligent (failed in your duty) depends on whether a reasonable person in similar circumstances would have acted differently.

AR 735-5, para 13-29 b(4), provides a list of factors to consider when determining how reasonable your actions were. They include:

- a) *The person's age, experience, physical condition, and special qualifications.* [An E2 might be held to a lower standard than an E8. A brand new E4 "supply sergeant" would likely be held to a different standard than an E7 supply sergeant.]
- b) *The type of responsibility the person had toward the property.* [You had command or supervisory responsibility, but you properly hand receipted the property and had good supply discipline in place, meaning those with direct or custodial responsibility should be held liable.]
- c) *The type and nature of the property.*
- d) *The nature, complexity, level of danger, or urgency of the activity ongoing at the time of the [loss or damage] of the property.* [Did the loss or damage happen during a rushed last minute preparation for deployment or in a relaxed garrison environment? The more urgent or complex the situation, the less we expect or demand perfection.]
- e) *The adequacy of supervisory measures or guidance for property control.* [Did you receive adequate supervision and guidance on how you were expected to deal with the property? Did you provide adequate supervision and guidance concerning how subordinates were to deal with the property?]
- f) *The feasibility of maintaining close supervision over the property, given the nature and complexity of the organization or activity supervised.* [Was it feasible for you to maintain close supervision? What was going on in the unit that may have impacted your ability to supervise the property?]

3. Did your actions or failure to act directly lead to the loss or damage? Was there an intervening cause (event or other person) that more directly caused the loss or damage?

In discussing this aspect of the FLIPL, the FLO will likely refer to "proximate cause". AR 735-5, para 13-29c, discusses proximate cause as follows:

Before holding a person financially liable for a loss to the Government, the facts must clearly show that the person's conduct was the "proximate" cause of the LDD [loss, damage or destruction]. That is, the person's acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the LDD, and without which the LDD would not have occurred.

Before the FLO can find your actions or failure to act as the "proximate cause" of the loss or damage, they must clearly show that your actions "in a natural and continuous sequence, unbroken by a new cause," caused the loss or damage. If there was an intervening cause that broke the "natural and continuous sequence" your actions were not the proximate cause. A simple example of an intervening cause would be in a FLIPL against a supply sergeant for damage to property in the supply cage. It is clearly shown the supply sergeant left the cage unlocked, which is obviously negligent. But the damage was caused by an electrical fire, for which the supply sergeant is in no way responsible. The electrical fire is an intervening cause that more directly led to the loss than the supply sergeant's negligent actions.

Get to work on your rebuttal

After reading this information paper, sit down at the computer and start drafting your story for the FLO.

1. Identify your level of responsibility or explain why you had no responsibility for the property. It is also important to identify whether someone else had responsibility for the property. For instance, you may have been receipted for the property (direct responsibility) but you loaned the item to another Soldier (personal responsibility).

2. Describe all the steps you took to perform your duty in regard to the property.

3. Discuss the circumstances, especially any factors or events that made it more difficult to properly carry out your duty toward the property. Remember, you are trying to convince the FLO that your actions, under the circumstances, are reasonable; that another Soldier of similar rank and experience, in similar circumstances, would have acted exactly as you did.

4. Discuss any intervening factors (events or others' actions) that broke the natural sequence or consequences of your actions.