

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 July 2024

DOCKET NUMBER: AR20230013082

APPLICANT REQUESTS: in effect, relief of financial liability for the Financial Liability Investigation of Property Loss (FLIPL) in the amount of \$261,561.62.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 200 (Financial Liability Investigation of Property Loss)

FACTS:

1. The applicant states in effect, the investigation did not demonstrate his acts or omission were negligent, nor did it properly establish a proximate cause for the loss.

a. Those who had physical control of the property as sub-hand receipt holders were not held liable let alone investigated. The investigation was not thorough, and the Investigating Officer (IO) did not interview many of the persons involved in the Command Supply Discipline Program (CSDP) for the unit. The IO implied he (the applicant) should have detected more discrepancies during the monthly cyclic inventories, which alleges would have prevented the loss. However, it does not mean he was the cause for the loss. Army Regulation (AR) 735-5 (Property Accountability Policies) states any negligence or breach of duty cannot be merely a potential factor in the cause for the loss, but rather the act or omission actually cause the loss. The IO never identified how, where or why the property was lost or who was responsible for the property at the time of the loss. The Financial Liability Officer (FLO) alleged his failure to identify discrepancies and to take administrative action was the proximate cause for the loss.

b. He inherited an expansive property book with thousands of administrative issues and errors from decades of neglect. He was the primary hand receipt holder for over \$32 million of equipment and 7,549 end items each with numerous sub-components that were spread out over multiple continents. All of the equipment was assigned to 52 different sub hand receipts that were managed by senior noncommissioned officers and officers within each directorate. The unit's CSDP was managed by about seven people and with the numerous challenges and discrepancies he found upon taking command,

he requested additional resources to manage the property and clean up the years of neglect. However, his requests for assistance were denied, including and extension on his out going change of command inventory.

2. A review of the applicant's service record shows:

a. On 16 May 2014, having had prior U.S. Army Reserve service as a cadet, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1.

b. On 21 January 2015, the applicant again executed his oath of office and was appointed as a 2LT in the Regular Army in the Military Police Corps.

c. On 12 March 2019, Orders Number 071-603, issued by the U.S. Army Maneuver Support Center of Excellence, the applicant was assigned to Headquarters (HQs) and HQs Company, 8th Military Police Brigade, effective 14 June 2019.

3. The applicant provides the DD Form 200 which shows the loss was discovered on 24 October 2022, the FLIPL was initiated on 31 October 2022, and the FLO was appointed on 28 February 2023. Item 12a (Negligence or Abuse Evident/Suspected) is marked "NO." 12b (Comments/Recommendations) states there is a combination of CSDP issued, BOM changes, and shortages not identified or reconciled appropriately from prior inventories and commands. The amount of loss was listed as \$362,112.13. The applicant submitted a statement of objection to the IO findings and recommendations.

a. The continuation page for block 13b (appointing authority comments/rationale) states the loss was \$243,996.00 and on the same page in item 1c (Dollar Amount of Loss) states \$261,561.62.

b. The continuation page for block 15c through d (Financial Liability Officer) monthly basic pay and recommended financial liability) shows; c. Basic Pay \$7120.50. d. Recommended Financial Liability \$261,561.62.

c. FLIP findings and recommendations memorandum stated the preponderance of the evidence reviewed during the investigation shows simple negligence by the applicant. The incident where the property loss was identified was during a change of Primary Hand Receipt Holder (PHRH) joint inventory conducted in August thru October 2022. Although the evidence did not show willful misconduct, the simple negligence was the proximate cause of the loss that occurred. The assessed company commander strived to update and maintain property accountability during his time in command, however, failed to accurately ensure hand receipts were kept up to date on a monthly basis. Multiple interviews and descriptions were evaluated showing the level of

difficulty to execute inventories and discrepancies. It was recommended the applicant be held financially liable for the loss of property through simple negligence in the amount of \$7,120.50.

d. The applicant was notified on 1 March 2023 of the recommendation for financial liability in the amount of \$7,120.50 for the loss of government property. On 28 March 2023, the applicant acknowledged the notification of financial liability.

e. On 21 April 2023, the applicant submitted a rebuttal to the findings and recommendations of the FLIPL stating the FLIPL was legally insufficient. The FLO failed to prove through a preponderance of the evidence that he was responsible at the time of the property loss, culpable or he proximately caused the loss. It was impossible to reliably designate a proximate cause of the loss for all the property and to assign simple negligence to his actions. The CSDP is only one aspect of command, though he dedicated as much time as practical to attempt to fix the numerous issues that accumulated over decades of mismanagement. The investigation did not hold the sub hand receipt holders accountable for the equipment that was legally signed for. Absent proof of these essential elements of negligence, he cannot be held liable for the loss. If found liable; however, he requests the amount of the liability be canceled due to the significant negative impact to his personal finances.

f. On 22 June 2023, the applicant appealed the finding of liability requesting to be found not liable as he was not negligent in his duties nor was, he the proximate cause for the property loss. He believed he acted like any reasonable person would have in the same situation after inheriting an expansive property book with thousands of issues from decades of negligence. He did not receive the assistance or resources he requested so his only choice was to make incremental positive progress. Any deficiencies in his CSDP were not due to negligence or carelessness but the lack of resources.

g. On 23 August 2023, the commanding general denied the applicant's relief from financial liability.

h. On 6 September 2023, the applicant was notified his appeal for relief of financial liability was denied by the commanding general.

4. On 1 April 2024, in the processing of his case, the Office of the Deputy Chief of Staff G-4, provided an advisory opinion regarding the applicant's request for relief of financial liability for the FLIPL initiated against him. The advisory official stated it was recommended the financial liability be reversed and that the Defense Finance and Accounting Service terminate the debt and return all funds garnished and the correction of his records.

The unit did not follow Army policy and procedures when conducting the FLIPL process and the recommendation to hold the applicant liable was not administratively sound. This recommendation is based on:

a. Paragraph 13-10b (2), if the loss or damage involves a component, list the component item in block 5 (Item description) and identify the end item in which it is a component. Several items listed in were components of an end item; however, the end item for these items is not listed.

b. Paragraph 13-17b (Approving Authority and Appointing Authority Criteria) Army officers in command positions in the grade of colonel or above, DA civilian employees in supervisory positions in the grade of GS-15, are approving authorities for financial liability investigations of property loss arising within their command or under their supervision. Approving authorities in the rank of COL (O-6) and GS-15 or above may delegate, in writing, approving authority to an Army officer in the rank of Lieutenant Colonel (O-5) for financial liability investigations assessing a final loss of \$5,000.00 or less that do not include equipment classified as COMSEC, sensitive items, and equipment that contains personal identification information (PII). Block 14g is not signed by an individual meeting the criteria for an approving authority and appointing authority. This block has been signed by the supply sergeant.

c. Paragraph 13-10d (15h), enter the date the investigation is submitted to the appointing or approving authority as appropriate. Block 15h is not populated with the date the report was submitted to the appointing or approving authority as appropriate.

d. Paragraph 13-10d (15j), the IO enters their signature. If DD Form 200 is electronically produced, electronic signatures may be used. Block 15j is not signed by Major K- S-, the appointed FLO. Instead, it is signed by Sergeant First Class J- S-.

5. On 3 April 2024, the Army Review Boards Agency, Case Management Division, provided the advisory opinion for review and comment. The applicant has not responded.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence shows after completion of command in September 2022, a FLIPL was initiated against the applicant for loss of equipment. An investigation found issues with the applicant's unit's command supply discipline and shortages not identified or reconciled appropriately from prior inventories. The FLIPL shows the applicant, as

Primary Hand Receipt Holder, failed to acknowledge discrepancies during monthly cyclic inventories, did not take appropriate administrative action necessary to adjust property accountability records, and failed to accurately ensure hand receipts were kept up to date on a monthly basis. As a result, a FLIPL was initiated to report the facts and circumstances supporting the assessment of financial charges for circumstances under which the property was lost, damaged, or destroyed. The amount of loss was listed as \$362,112.13 with a net Financial Liability against the applicant of \$261,561.62. He was accordingly notified that he was recommended for financial liability for the loss of Government property under the subject investigation of property loss in FLIPL [Number].

b. The Board thoroughly reviewed all the fact and agreed with the applicant's contention that the FLIPL investigation did not demonstrate that his acts or omission were negligent, nor did it properly establish a proximate cause of the loss given the circumstances and challenges at the time (applicant's inexperience, unit manning shortages, lack of resources, COVID, and geographical dispersion). The Board also reviewed and agreed with the advisory official's finding that FLIPL and appropriate procedures were not followed during the FLIPL process (such as the approving and appointing authorities on the FLIPL not meeting criteria and improper signatures by unauthorized officials). Due to these multiple errors, the Board determined the financial liability should be reversed: the applicant should be relieved of the responsibility for the loss of government property, the subject debt should be voided, and the full amount of monies collected refunded to the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- a. showing he was found to not be financially liable and therefore voiding the applicant's debt incurred as a result of FLIPL Number WJ****-█
- b. auditing his military pay records and paying him all monies due as a result of this correction.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 710-2 (Supply Policy Below the National Level) prescribes policy for supply operations below the national level. Appendix B implements the CSDP. It states the CSDP is a commander's program and that commanders will implement the CSDP by using their existing resources. It further provides program guidance that includes enforcement of supply discipline methods, administrative measures, disciplinary measures, reaction to incidents of non-financial liability, and ensuring supply discipline and management controls.

2. AR 735-5 (Property Accountability Policies) prescribes the basic policies and procedures in accounting for Army property and sets the requirements for formal property accounting within the Army, which includes but is not limited to defining the CSDP, its intent, and implementing procedures. It specifies that commanders at all levels will ensure compliance with all policies and procedures prescribed by this regulation that apply at their level of command. AR 735-5 defines the following terms:

a. Negligence – The failure to act as a reasonably prudent person would have acted under similar circumstances. An act or omission that a reasonably prudent person would not have committed, or omitted, under similar circumstances and which is the proximate cause of the loss of, damage to, or destruction of Government property. Failure to comply with existing laws, regulations, and/or procedures may be considered as evidence of negligence.

b. Proximate Cause – The cause, which in a natural and continuous sequence of events unbroken by a new cause, produced the loss or damage. Without this cause, the loss or damage would not have occurred. It is further defined as the primary moving cause, or the predominant cause, from which the loss or damage followed as a natural, direct, and immediate consequence.

c. Chapter 13 states that the purpose of a FLIPL documents the circumstances concerning the loss or damage of Government property and serves as, or supports, a voucher for adjusting the property from accountable records. It also documents a charge of financial liability assessed against an individual or entity or provides for the relief from financial liability. Chapter 13 also states a FLO responsibility is to determine the cause and value of the loss or damage of Government property listed on the DD Form 200 and determine if assessment of financial liability is warranted. That determination must be based on the facts developed during a thorough and impartial investigation. However, before beginning the investigation, the FLO must understand the terms "responsibility, culpability, proximate cause, and loss;" each term impacts upon a determination of financial liability. Individuals may be held financially liable for the loss or damage of Government property if they were negligent or have committed

willful misconduct, and their negligence or willful misconduct is the proximate cause of that loss or damage.

(1) Proximate Cause: 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 loss or damage. 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 loss or damage, and without which the loss/damage would not have occurred.

(2) Loss: 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 loss or damage. 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 loss or damage, and without which the loss or damage would not have occurred.

d. Paragraph 13-4 (Related financial liability investigations of property loss), a. When property listed on more than one property account becomes lost, damaged, or destroyed in the same incident, initiate a separate DD Form 200 for each property account affected. Cross-reference the separate DD Form 200 to each other. b. When the lost, damaged, or destroyed property is on the property records of the same account and the same document register, prepare only one DD Form 200.

e. Paragraph 13-13, the responsible officer and/or reviewing authority will forward financial liability investigations of property loss with exhibits, to the approving authority for assignment of an inquiry investigation number and then to the accountable officer for assignment of a document and/or voucher number.

f. Paragraph 13-23 (Recommendation by the appointing authority without further investigation), this action provides the appointing authority, when designated, the option to recommend shorting the financial liability investigation process when the facts and circumstances permit. The short financial liability investigation does not relieve the appointing and/or approving authority from performing those actions normally conducted by the IO if liability is assessed, such as determination of fair market value or depreciation. (c) In block 15a, enter a recommendation regarding the charge of financial liability, and the amount of financial liability being recommended. Enter a statement explaining the facts on which the appointing authority's recommendation is based. Enter the name, grade, and social security number of those individual(s) being recommended for charges of financial liability. (d) Complete blocks 15b, block 15c, and block 15d showing the amount of the loss, the respondent's monthly basic pay, and the recommended amount of financial liability. When more than one individual is being recommended for charges of financial liability, use an added page that contains the elements of information that are unique to the individuals being recommended for charges of financial liability.

g. Paragraph 13-29 (FLO's responsibilities), A financial liability officer's responsibility is to determine the cause and value of the loss or damage of Government property listed on the DD Form 200, and to determine if assessment of financial liability is warranted. That determination must be determined from the facts developed during a thorough and impartial investigation. However, before beginning the investigation the FLO must have an understanding of the terms "responsibility, culpability, proximate cause, and loss;" each term impacts upon a determination of financial liability. Individuals may be held financially liable for the loss or damage of Government property if they were negligent or have committed willful misconduct, and their negligence or willful misconduct is the proximate cause of that loss or damage.

h. Paragraph 13-34 (Financial liability recommended), a. Before forwarding the DD Form 200 to the appointing or approving authority, the FLO will give any individual, against who makes a recommendation to assess financial liability, a chance to examine the DD Form 200 after the findings and recommendations have been recorded on the DD Form 200, and the opportunity to make a rebuttal statement on their behalf.

i. Paragraph 13-40d (4), the approving authority can overrule, when appropriate, the recommendations of the appointing authority and the FLO. When this action results in the assessment of financial liability, the individuals not previously recommended for liability will be advised in writing of their rights and afforded an opportunity to exercise their rights, and Paragraph 13-44 states the approving authority, upon receipt of a request for reconsideration, will review any new evidence offered, and decide to either reverse the previous decision assessing financial liability against the individual or recommend the continuation of the assessment of financial liability. A request for reconsideration will be reviewed only on the basis of legal error (that is, the request must establish that the facts of the case do not support an assessment of financial liability).

3. Department of the Army (DA) Pamphlet 710-2-1(Using Unit Supply System (Manual Procedures) Paragraph 9-6 (b) (Annual or Cyclic Inventory) provides when the cyclic inventory option has been chosen, conduct cyclic inventories monthly, quarterly, or semiannually. Inventory about 10 percent of the property book items monthly, 25 percent quarterly, or 50 percent semiannually.

4. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10, United States Code (USC), section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10, USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//