

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 September 2024

DOCKET NUMBER: AR20240000022

APPLICANT REQUESTS: remission of \$6,780.30 debt incurred as a result of a Financial Liability Investigation of Property Loss (FLIPL).

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Request for Reconsideration of FLIPL \$6,030.65, 24 July 2023
- Memorandum – Subject: Pending Debt Collection Response for FLIPL in the amount of \$6,780.30, 2 October 2023
- Memorandum – Subject: FLIPL (\$60,306.54), 11 July 2023
- DD Form 200 (FLIPL)
- Memorandum – Subject: Appointment of Financial Liability Officer (FLO), 6 March 2023
- Email communication, 11 July 2023
- Memorandum – Subject: Rebuttal to FLIPL, 19 June 2023
- Memorandum – Subject: Response to FLIPL Rebuttal, 20 June 2023
- Memorandum – Subject: Findings for FLIPL, 22 March 2023
- Memorandum – Subject: Legal Review, 3 July 2023

FACTS:

1. The applicant states in pertinent part that the FLIPL conducted to determine financial liability for the loss of government property was not legally sound. He contests that he was found financially liable after he departed from military service. He further provides that the governing Army policy provides that for an individual to be assessed liability, all four elements of a FLIPL must be met. He notes that the FLIPL does not acknowledge that a joint inventory was conducted, and that the commander endorsed the document acknowledging that there was nothing outstanding. He argues that to initiate an investigation 5-6 months after conducting a change of command with a finding of liability on the former commander reflects a broken chain of custody. The legal office at the Brigade level did not conduct a proper legal review.

2. A review of the applicant's available service records reflects the following:

a. On 15 December 2012, the applicant was appointed as a Reserve commissioned officer.

b. On 12 July 2017, the U.S. Army Human Resources Command (AHRC) issued Orders Number A-07-701060 ordering the applicant to active duty, effective 15 September 2017 for an indefinite period.

c. On 26 August 2019, AHRC issued Orders Number 238-953 announcing the applicant's promotion to captain (CPT), effective 1 September 2019.

d. On or about 1 June 2021, the applicant was assigned to serve as a commander.

e. On 17 August 2022, the applicant requested to be released from active duty in order to pursue service within the Active Guard/Reserve (AGR) program. His request was further recommended for approval by his leadership noting that he had satisfied all applicable service obligations and was not under investigation or charges. The applicant was subsequently released from active duty on 23 January 2023.

f. On 28 October 2022, AHRC issued Orders Number R-10-208032 ordering the applicant to active duty in an AGR status for a period of 3 years, effective 24 January 2023.

3. The applicant provides:

a. Memorandum – Subject: Request for Reconsideration of FLIPL \$6,030.65, dated 24 July 2023, reflective of the applicant's submitted request for reconsideration of the FLIPL findings holding him financially liable for the loss of military property. The applicant notes that he was no longer serving as the commander five months prior to the initiation of the investigation and that his replacement had conducted an entire inventory of all equipment on two property books. During the pre-change of command period, statement of charges was issued to service members that were unable to account for equipment that they had previously signed for. The applicant's replacement provided a memorandum for record stating that there was nothing outstanding or unaccounted for and that she was accepting responsibility for all equipment in accordance with Army Regulation (AR) 710-2 (Inventory Management Supply Policy). Further, he could not have been the proximate cause of the loss because there was no natural and continuous sequence, unbroken by a new cause, producing the loss as defined in AR 735-5 (Property Accountability).

i. The applicant notes that he maintained an inventory list of all of the unit's equipment. He kept a separate list for all equipment that was being sent forward on the deployment and the equipment that was staying in the rear. He was unable to adjust the official property books himself because only the Supply Sergeant had access to that

system. Concurrently, the applicant notified his Battalion Commander of the issues that he was having with the property books and his Supply Sergeant. However, his leadership advised him to continue accordingly.

ii. Following his return from deployment all equipment was counted and checked against his inventory list. Every piece of equipment in the property book was accounted for and quantities were correct. The only issue with the property book was that it was not separated into forward (deployed) equipment and back (rear detachment) equipment.

iii. By the time the actual change of command was conducted, the equipment had been inventoried and accounted for on three different occasions. Each time, all equipment was either accounted for, issued to a sub-hand receipt holder, or reconciled through a FLIPL requiring an assessment/statement of charges.

iv. This letter was provided in its entirety for the Board member's review.

b. Memorandum – Subject: Pending Debt Collection Response for FLIPL in the amount of \$6,780.30 dated 2 October 2023 reflective of the applicant's acknowledgment of the validity of the debt and agreement to a one-time collection; this document is void of the applicant's signature.

c. Memorandum – Subject: FLIPL \$60,306.54, reflective of the applicant being notified by his commander of the approved charges of financial liability for \$6,780.30 for the damage of government property. The applicant was advised of his rights and afforded 30 days to request reconsideration.

d. DD Form 200, reflective of a FLIPL being initiated on 21 February 2023 wherein the applicant was found financially liable (\$6,780.30) due to his negligence in developing an effective Command Supply Discipline Program; total loss amount \$60,306.54.

e. Memorandum – Subject: Appointment of FLO dated 6 March 2023, reflective of the appointment of a FLO being directed to conduct an investigation of property loss. The FLO was given until 22 March 2023 to complete the investigation.

f. Email dated 11 July 2023, reflective of the 30-day suspense notification associated with the FLIPL.

g. Memorandum – Subject: Rebuttal to FLIPL dated 19 June 2023, reflective of the applicant's contention with the FLIPL findings. This letter is further provided in its entirety within the supporting documents for the Board member's review.

h. Memorandum – Subject: Response to FLIPL Rebuttal dated 20 June 2023, reflective of the FLO's review of the applicant's rebuttal noting that he still recommended that the applicant be held financially liable with the requirement to repay one-month's base pay.

i. Memorandum – Subject: Findings for FLIPL dated 22 March 2023, reflective of a detailed account of the FLIPL findings with a recommendation that the applicant be held financially liable for the loss of property in the amount of one-month's pay.

j. Memorandum – Subject: Legal Review dated 3 July 2023 reflective of a legal review conducted pertaining to the FLIPL proceedings wherein the applicant was found to be financially responsible for the loss of government equipment due to his negligence.

4. On 11 July 2024, the Department of the Army Office of the Deputy Chief of Staff, G-4, provided an advisory opinion noting that the applicant's unit did not follow Army Policy and procedures when conducting the FLIPL process in accordance with AR 735-5 and the recommendation to hold the applicant responsible is not administratively sound. Noted deficiencies include issues with the Appointing and Approval Authority reflected on the DD Form 200, absence of sworn statements by persons interviewed during the conduct of the investigation provided and the lack of proximate cause due to the applicant no longer being assigned to the unit when the investigation was conducted.

5. On 16 July 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 9 September 2024, the applicant has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.

2. The Board concurred with the conclusion of the advisory official that the FLIPL process that led to the finding of the applicant's liability was not conducted properly and there was a lack of proximate cause because the applicant was no longer assigned to the unit when the investigation was conducted. The Board determined the applicant's record should be corrected to show that the FLIPL conducted in 2023 found he was not financially liable for any property loss.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is 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 showing the FLIPL conducted in 2023 found he was not financially liable for any property loss.

3/4/2025

X

CHAIRPERSON

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 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 Command Supply Discipline Program, 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. Chapter 13 provides 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.

a. 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.

b. Section 5-1 provides that as a part of the FLIPL, it is necessary for the FLO to determine the cost of the loss to the Government. When recommending assessment of financial liability, the FLO will determine the amount that should be charged. The basic premise is that the charge should represent the actual cost of the loss to the Government. Actual loss to the Government is the difference between the value of the property immediately before its loss, damage, or destruction, and its value immediately after.

c. Paragraph 13-41 (Liability Limits) provides that when negligence or willful misconduct are shown to be the proximate cause for a loss, individuals or entities will be assessed the full amount of the Government's loss, minus amounts charged to others. In all other cases, the amount equal to one month's basic pay at the time of the loss or the actual amount of the loss to the government, whichever is less, may be assessed.

d. Section X (Notice to Respondents on Assessment of Financial Liability) provides that before individuals are held financially liable, they must receive notice and the opportunity to exercise their rights, as listed below. Notification of the respondent will be accomplished by the approving authority using a memorandum. The memorandum with a copy of the DD Form 200 with all exhibits will be hand delivered to the person found financially liable. If the individual is not available locally, the memorandum will be forwarded by certified mail, return receipt requested. The memorandum will inform the individual that collection efforts will begin 30 calendar days (ARNG 60 calendar days) from the date delivered or mailed. When a memorandum is returned indicating that the memorandum is not deliverable, the approving authority need not make further attempts to notify the individual of their rights. When time limits expire without action by the respondent, the approving authority will forward the DD Form 200 for collection under cover of a transmittal document requesting acknowledgment of receipt.

2. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 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//