

ATZR-JA
Mr. Bennett/2-1099
5 January 2009

INFORMATION PAPER

SUBJECT: Effect of Determination that Service Member's Death is Not in Line of Duty-Due to Own Misconduct (NLD-DOM) on Survivors Benefits

1. **PURPOSE.** To describe the adverse consequences that can occur to Survivor Benefits when the death of a Service Member (SM) is determined NLD-DOM.

2. **FACTS AND DISCUSSION.** AR 600-8-4, Line of Duty Policy, Procedures and Investigations (4 September 2008) establishes procedures for investigating the circumstances surrounding the disease, injury or death of a SM and provides standards used in determining Line of Duty (LD) status. LD investigations are conducted to determine whether misconduct or negligence was involved in the occurrence of the disease, injury or death and, if so, to what degree. Under AR 600-8-4, simple or ordinary negligence or carelessness, standing alone, does not ordinarily constitute misconduct. Generally, any injury, disease or death caused solely by simple negligence will be considered in LD. However, when injury, disease or death is proximately caused by a SM's intentional misconduct, willful negligence, or abuse of alcohol or drugs, a determination of NLD-DOM will result. The NLD-DOM determination, in a case involving death, has a significant adverse impact on the benefits the surviving family members of the SM might otherwise receive.

3. EFFECT OF NLD-DOM DETERMINATION ON SURVIVOR BENEFITS.

Some survivors' benefits may remain in effect despite a determination that the SM's death was NLD-DOM. However, many benefits, particularly those under the control of the Department of Veterans Affairs, may be lost as a result of a NLD-DOM determination, as the following analysis demonstrates:

a. Survivor Benefit Plan (SBP) (10 USC § 1072). If a SM is not retirement eligible (less than 20 years of active service) at the time of death and the death is determined to be NLD-DOM, then the surviving family members do not qualify for SBP benefits. If the SM is retirement eligible at the time his death and his death is determined NLD-DOM, then the SBP base amount available to his survivors is equal to the retired pay as if the SM were retired for length of service.

b. Death Gratuity (10 USC § 1475). Where a SM's death is determined NLD-DOM, his survivors would not qualify for the Death Gratuity payment.

c. Servicemember's Group Life Insurance (SGLI) Program (38 USC § 1965). If at the time of the SM's death, SGLI was in full force and effect, then a determination of NLD-DOM does not prevent payment of SGLI benefits to the SM's designated beneficiaries. However, in the event any of the SM's acts of misconduct, which led to his

death, constitute termination [38 USC § 1968(a) in the case of AWOL or confinement] or forfeiture (38 USC § 1973 in the case of mutiny or treason) of his SGLI policy, his survivors or beneficiaries would not be entitled to life insurance proceeds.

d. Select Department of Veterans Affairs Benefits. Several benefit programs under the auspices of the VA may be affected by the Army's determination that a SM's death is NLD-DOM. Because these are VA administered benefits, the VA makes the final determination as to eligibility. The VA programs, among other, include:

(1) Dependency and Indemnity Compensation (DIC) (38 USC § 1311). This benefit may not be available if the SM's death results from the SM's intentional misconduct or willful negligence and may adversely affect DIC eligibility for surviving family members.

(2) Montgomery GI Bill Death Benefit (38 USC § 1623). Designated survivors may lose this benefit if the SM's death is determined not to be in service or not service-connected.

(3) Survivors' and Dependents' Education (38 USC Chapter 35). Spouses and children of veterans who die or are permanently and totally disabled as a result of a disability arising from active service in the Armed Forces may qualify for education assistance benefits. A SM's death determined to be NLD-DOM may impact the eligibility of his or her dependents to participate in this educational benefit.

(4) Civilian Health and Medical Program of the Department of Veteran Affairs (CHAMPVA) (38 USC § 1781). CHAMPVA provides health care for qualifying dependents of veterans in which the VA shares the cost of covered health care services and supplies with eligible beneficiaries. A SM's death must be in the Line of Duty, not due to intentional misconduct or willful negligence, for his surviving spouse or child to qualify for CHAMPVA benefits. A finding of NLD-DOM could preclude the SM's surviving spouse or child from qualifying for CHAMPVA. If not eligible for CHAMPVA, the surviving dependents of a SM who dies on active duty, whether or not the death is determined to be in the LD, may be eligible to continue TRICARE benefits for up to three years after the SM's death.

4. SUMMARY. When a SM's death is determined to be NLD-DOM, the SM's surviving dependents may well suffer adverse consequences through the loss of various survivor benefit programs. For any additional information on this matter, contact the Administrative and Civil Law Division, Office of the Staff Judge Advocate at 442-2703.

Approved by COL Risch, SJA/2-2685