

**BY ORDER OF THE COMMANDER  
HQ AIR FORCE PERSONNEL CENTER**

**AIR FORCE PERSONNEL CENTER  
INSTRUCTION 36-106**



**8 AUGUST 2014**

Certified Current, 28 APRIL 2022

**Personnel**

**BOARDS OF INQUIRY FOR PERSONNEL  
MISSING UNDER HOSTILE CONDITIONS**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

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OPR: HQ AFPC/DPFCM

Certified by: HQ AFPC/DPF  
(Mr. Randy G. Tillery)

Pages: 18

Supersedes: AFPCI36-106, 28 June 2011

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This instruction establishes procedures for appointing and conducting boards of inquiry. It applies to Air Force, Air National Guard, and Air Force Reserve personnel on active duty orders, civilian employees of the Air Force, and employees of a contractor of the Air Force who serve in direct support of or accompany the Air Force in the field under orders, and who become involuntarily absent as a result of a hostile action or under circumstances suggesting that the involuntary absence is a result of a hostile action. Source: Title 10, United States Code (U.S.C.) Chapter 76, *Missing Persons* and Department of Defense (DoD) Instruction 2310.05, *Accounting for Missing Persons – Boards of Inquiry*. For the purpose of Next of Kin (NOK) rights, Primary and other NOK are defined in DODI 1300.18, *Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures*, Enclosure 2, *Definitions*.

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The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items. Refer to attachment 1 for the Glossary of References and Supporting Information.

### ***SUMMARY OF CHANGES***

**This document has been substantially revised and must be completely reviewed.** This revision identifies tiered waiver authorities for unit level compliance items, updates applicable SORN, and updates office symbols throughout publication.

#### **1. Appointment of Board of Inquiry Officers.**

1.1. The Commander, Air Force Personnel Center (AFPC/CC), having been delegated authority to act on behalf of the Secretary of the Air Force, appoints boards of inquiry and subsequent boards of inquiry for the purpose of determination of status of missing and deceased personnel in accordance with Title 10, U.S.C., Sections 1503 – 1505, Chapter 76; reviews board findings; and makes status determinations. Appointment of boards of inquiry includes appointment of a legal advisor (who provides counsel) and counsel for the missing person or persons.

1.2. Board composition, qualifications, and duties will be as prescribed in Title 10, U.S.C. Sections 1503 and 1504, Chapter 76, except that:

1.2.1. In the case of a board that will inquire into the whereabouts and status of one or more military personnel (and no civilians), the board will be comprised of three colonels, the senior board member serving as President of the board.

1.2.2. In the case of a board that will inquire into the whereabouts and status of one or more civilian employees of the AF or contractors of the AF (and no military personnel), the board will be comprised of three civilian employees equal to or greater than grade GS-13.

1.2.3. In the case of a board that will inquire into the whereabouts and status of both one or more military personnel and one or more civilians described in subparagraph 1.2.2, the

board will include at least one colonel and one civilian employee equal to or greater than grade GS-13. The ratio of such officer and civilian board members will be roughly proportional to the ratio of military personnel and civilians who are subjects of the board's inquiry. The board will be comprised of at least three members.

1.3. The provisions of this instruction relating to boards of inquiry, and to the actions by AFPC/CC on the reports of those boards, will cease to apply in the case of a missing person upon the person becoming accounted for or otherwise being determined to be in a status other than missing.

## **2. Next of Kin Rights.**

2.1. For the purpose of NOK rights under this instruction, primary and other NOK are as defined in DoDI 1300.18, Enclosure 2. The individual who is primary NOK (PNOK) of any person covered by Title 10, U.S.C. Section 1501, Chapter 76, may designate another individual to act on behalf of that individual as PNOK. This designation may be revoked at any time by the person who made the designation.

2.2. For boards of inquiry under Title 10, U.S.C. Sections 1503 and 1504, Chapter 76, the PNOK of a missing person and any other previously designated person will have the identity of the missing person's counsel made known to them and have the right to submit information to the missing person's counsel relative to the disappearance or status of the missing person.

2.3. The proceedings of a board during an inquiry under Title 10, U.S.C. Section 1503, Chapter 76, will be closed to the public (including, with respect to the person or persons covered by the inquiry, the PNOK, other NOK, and any other previously designated person or persons).

2.4. For subsequent boards of inquiry under Title 10, U.S.C. Section 1504, Chapter 76, the PNOK of a missing person, other members of the immediate family, and any other previously designated person of the missing person:

2.4.1. May attend the proceedings of the board during the inquiry. Those attending will not be entitled to reimbursement by the government for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, and witness expenses) incurred by that individual.

2.4.2. Will have access to the personnel file of the missing person, to unclassified reports, if any, of the board, and to any other unclassified information or documents relating to the whereabouts and status of the missing person.

2.4.3. Will be afforded the opportunity to present information to the board that such individual considers relevant to those proceedings.

2.4.4. Will be given the opportunity to submit in writing an objection to any recommendation of the board by providing the board a letter of intent not later than 15 days after the date of board recommendations. Written objections should be submitted to the board not later than 30 days after the date of board recommendations.

2.4.5. The PNOK or the previously designated person may attend the proceedings of the board with private counsel.

### **3. Notification and Election of Rights.**

3.1. The Missing Persons Branch (AFPC/DPFCM) will notify each individual referred to in paragraph 2.4 of the opportunity to attend the proceedings of a subsequent board of inquiry. Notification will be by certified letter not less than 60 days before the first meeting of the board. (T-0)

3.2. AFPC/DPFCM will also provide a copy of this instruction, the Summary of Facts and Circumstances (compiled by AFPC/DPFCM), and a letter of election to attend the board (Attachment 2). (T-0)

### **4. Board Procedures.**

4.1. The Air Force is required to place before the board all relevant evidence in its possession on the absence or status of the missing member. If it appears to AFPC/CC that the absence or missing status of two or more persons is factually related, AFPC/CC may appoint a single board to conduct the inquiry into the whereabouts and status of all such persons. Neither the AF nor those having board rights are required to call witnesses.

4.2. The board will:

4.2.1. Collect, develop, investigate, and analyze all facts and evidence relating to the disappearance or whereabouts and status of the person(s).

4.2.2. Deliberate in closed session, and arrive at its findings and recommendation by majority vote. The Board President uses the script (Attachment 3) to lead the board proceedings.

4.2.3. Submit to AFPC/CC a complete report (normally recorded on DD Form 2811, *Report of Proceedings by Initial/Subsequent Board of Inquiry or Further Review Board*) which will include:

4.2.3.1. A discussion of the facts and evidence considered by the board.

4.2.3.2. Findings and conclusions of the board.

4.2.3.3. A recommendation for a determination by AFPC/CC concerning the whereabouts and status of the missing person(s). A majority vote will determine the board's findings and recommendations.

4.2.3.4. Disclosure of whether classified documents and information were reviewed by the board or were otherwise used by the board in forming recommendations.

4.2.3.5. The independent review submitted by the Missing Person's Counsel.

4.2.3.6. A legal review and any written objections.

### **5. Legal Advisor and Counsel for Missing Person.**

5.1. AFPC/CC will appoint, for the purposes of a board inquiry conducted in accordance with Title 10, U.S.C. Sections 1503-1505, Chapter 76:

5.1.1. Legal Advisor. The AFPC Commander appoints a non-voting legal advisor. The legal advisor's role is to conduct the hearing in an orderly manner and rule on any questions of law, and/or procedure pertaining to the hearing. The standard used to determine when evidence is admissible is relevance. The legal advisor instructs the board

on the governing statutes and directives, but is not present for the board's deliberation in closed session. The legal advisor is not representing the Air Force.

5.1.2. Missing Person Counsel. AFPC/CC appoints legal counsel to represent all missing person(s) considered at the board of inquiry. Missing Person Counsel does not represent the family or other interested parties of the missing person(s). If the board of inquiry involves more than one missing person, AFPC/CC may appoint one counsel to represent all persons covered by the board of inquiry. Qualifications and duties of missing persons counsel are as prescribed by Title 10, U.S.C. Section 1503(f), Chapter 76.

## **6. Board Findings and Recommendations.**

6.1. The finding of the board will be one of the following:

6.1.1. The person is placed (or continued) in a missing status.

6.1.2. The person is declared to have deserted or to be absent without leave.

6.1.3. The person is declared to be dead (subject to the requirements of Title 10, U.S.C. Section 1507, Chapter 76).

6.2. Recommendations. A finding of paragraphs 6.1.1 or 6.1.2 must be supported by a preponderance of evidence. A finding of paragraph 6.1.3 may not be recommended unless:

6.2.1. Credible evidence exists to suggest that the person is dead.

6.2.2. The U.S. possesses no credible evidence that suggests that the person is alive.

6.2.3. Representatives of the U.S. have made a complete search of the area where the person was last seen (unless, after making a good faith effort to obtain access to such area, such representatives are not granted such access); and have examined the records of the government or entity having control over the area where the person was last seen (unless, after making a good faith effort to obtain access to such records, such representatives are not granted such access).

6.3. Submittal of Information of Death. If a board appointed under Title 10, U.S.C. Sections 1503-1505, Chapter 76, makes a recommendation that a missing person be declared dead, the board will include in the report of the board with respect to the person under that section the following:

6.3.1. A detailed description of the location where the death occurred.

6.3.2. A statement of the date on which the death occurred.

## **7. Record of Board Proceedings and Legal Review.**

7.1. Any member of the Board or missing persons counsel may request a verbatim record for any part of the proceedings or the entire proceedings. AFPC/CC is the approval authority for such requests. In those cases, the court reporter prepares a verbatim record of the proceedings. The legal advisor will certify the record as accurate before it is distributed to anyone and will resolve any disagreement as to the accuracy.

7.2. AFPC/JA will prepare a legal review for each board conducted.

## **8. Final Board Action.**

8.1. AFPC/DPFCM will forward the findings of the board and legal review(s) through AFPC/DPF to AFPC/CC for final determination.

8.2. In reviewing the report, AFPC/CC will determine whether the report is complete and free of administrative error. If AFPC/CC determines that the report is incomplete, or not free of administrative error, AFPC/CC may return the report to the board for further action. Upon a determination by AFPC/CC that the report is complete and free of administrative error, AFPC/CC will make a determination concerning the status of each person covered by the report.

8.3. Not later than 30 days after the date on which AFPC/CC makes a determination of the status of a covered person (Title 10, U.S.C. Section 1503, Chapter 76), AFPC/CC will provide to the PNOK, the other members of the immediate family, and any other previously designated person of the missing person: **(T-0)**

8.3.1. An unclassified summary of the unit commander's report with respect to the covered person.

8.3.2. The report of the board (including the names of the board members), and inform each person that the United States will conduct a subsequent inquiry into the whereabouts and status of the covered person on or about one year after the date of the first official notice of the disappearance of the covered person, unless information becomes available sooner that may result in a change in status of the covered person.

8.4. Not later than 60 days after the date on which AFPC/CC makes a determination with respect to a missing person (Title 10, U.S.C. Section 1504, Chapter 76), AFPC/CC will provide a copy of that report to the PNOK, the other members of the immediate family, and any other previously designated person of the missing person, and inform each person that the United States will conduct a further investigation into the whereabouts and status of the person as specified in Title 10, U.S.C. Section 1505, Chapter 76. **(T-0)**

MARGARET B. POORE, Major General, USAF  
Commander

**Attachment 1****GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

AFI 33-332, *The Air Force Privacy and Civil Liberties Program*, 5 June 2013

AFI 33-360, *Publications and Forms Management*, 25 September 2013

Air Force Manual (AFMAN) 33-363, *Management of Records*, 1 March 2008

DODI 2310.05, *Accounting for Missing Persons – Boards of Inquiry*, 14 March 2008

DODI 1300.18, *Department of Defense (DoD) Personnel Casualty Matters, Policies, and Procedures*, 14 August 2009

Title 10, U.S.C. Chapter 76, *Missing Persons*

***Adopted Forms***

AF Form 847, *Recommendation for Change of Publication*

DD Form 2811, *Report of Proceedings by Initial/Subsequent Board of Inquiry or Further Review Board*

***Abbreviations and Acronyms***

**AF**—Air Force

**AFI**—Air Force Instruction

**AFMAN**—AF Manual

**ANG**—Air National Guard

**DoD**—Department of Defense

**DoDI**—Department of Defense Instruction

**FOUO**—For Official Use Only

**IAW**—In accordance with

**NOK**—Next of Kin

**OPR**—Office of Primary Responsibility

**PII**—Personally Identifiable Information

**PNOK**—Primary Next of Kin

**RDS**—Records Disposition Schedule (RDS)

**SORN**—System of Records Notice

**SSN**—Social Security Number

**U.S.C.**—United States Code

*Terms*

**Tier 0 (T-0)**—Determined by respective non-AF authority (e.g. Congress, White House, Office of Secretary of Defense, Joint Staff). The waiver authority is non-applicable, or external to AF.

**Tier 1 (T-1)**—Non-compliance puts Airmen, Commanders or the USAF strongly at risk of mission or program failure, death, injury, legal jeopardy or unacceptable fraud, waste or abuse. The waiver authority is the MAJCOM/CC, delegable no lower than MAJCOM Director, with the concurrence of the AFI Certifying Official.

**Tier 2 (T-2)**—Non-compliance may degrade mission or program effectiveness or efficiency and has potential to create moderate risk of mission or program failure, injury, legal jeopardy or unacceptable fraud, waste or abuse. The waiver authority is the MAJCOM/CC (delegable no lower than MAJCOM Director).

**Tier 3 (T-3)**—Non-compliance may limit mission or program effectiveness or efficiency and has a relatively remote potential to create risk of mission or program failure, injury, legal jeopardy or unacceptable fraud, waste, or abuse. The waiver authority is the Wing/DRU/FOA/CC (delegable no lower than Group/CC or equiv).

**Attachment 2**

**SAMPLE, LETTER OF ELECTION**

TO: AFPC/DPFCM  
550 C Street West, Suite 14  
JBSA-Randolph AFB, TX 78150-4717

(I, We) understand that the Air Force will upon (my, our) completion of this letter proceed with  
a

review of the case of \_\_\_\_\_  
\_\_\_\_\_ .

who is (my, our)

(I, We) understand the rights which have been afforded to (me, us) and have indicated by checking the appropriate block the rights desired in connection with the review to be made.

(Please check one of the boxes below)

I.  Board of Inquiry Rights (Title 10, U.S.C. Sections 1504 or 1505): (I, We) desire to attend the board of inquiry and understand that a civilian attorney may attend with (me, us). (I, We) desire reasonable access to the information upon which the review will be based. A summary of the information which (I, we) desire to be considered by the board (is, is not) attached. (I, We) understand that (I, we) will not be entitled to reimbursement by the United States for any costs (including, but not limited to, travel, lodging, meals, local transportation, legal fees, transcription costs, and witness expenses) incurred by (me, us) in attending such proceedings.

II.  Waiver of Rights: (I, We) hereby waive (my, our) right to attend the board of inquiry.

III  Election of Waiver to Attend With Right to Submit Information: (I, We) hereby waive (my, our) right to attend the board of inquiry, but have attached information which (I, we) desire to be considered by the board.

Signature(s)	Relationship to Service member Named Above	Date
_____	_____	_____
_____	_____	_____
_____	_____	_____

Sincerel  
y,

### Attachment 3

#### SAMPLE, MISSING IN ACTION BOARD SCRIPT

(This script is primarily written for an Initial Board of Inquiry. Should a Subsequent Board of Inquiry be convened, the Board will be referred to as a "Subsequent Board." Additionally, the Board Legal Advisor will address other slight script changes with the President and the Missing Person's Counsel prior to opening the Subsequent Board.)

#### INTRODUCTION:

**PRESIDENT:** Good (morning/afternoon). This Board will come to order. In accordance with Department of Defense Instruction 2310.05 and Air Force Personnel Center Instruction 36-106, this (initial/subsequent) Board of Inquiry is convened for the purpose of determining the whereabouts and status of (Rank)(Full name), pursuant to the provisions of the Missing Persons Act. The following individuals were appointed to this (initial/subsequent) Board by (*--- insert Commander's title/name ---*), Commander, Air Force Personnel Center, JBSA-Randolph AFB TX:

(Rank)(Full name), Board  
President (Rank)(Full name),  
Board Member (Rank)(Full  
name), Board Member

(Rank)(Full name), Board Legal Advisor  
(Rank)(Full name), Counsel for (Rank, Full name)

#### PRELIMINARY ADVICE:

**PRESIDENT:** Before the Board begins its inquiry, the Board Legal Advisor needs to cover certain preliminary matters.

**BOARD LEGAL ADVISOR:** Good (morning/afternoon). I am (Rank) (Full name), legal advisor to this board. Before you begin your inquiry, I'd like to give you a short briefing on your responsibilities.

(*--- Insert Commander's title/name ---*), Commander, Air Force Personnel Center, JBSA-Randolph AFB TX, has appointed you, under the authority of Title 10, U.S.C. Section 1503, to conduct an inquiry into the whereabouts and status of (Rank) (Full name).

As members of this board, your duties are to:

Collect, record, and safeguard all facts, documents, statements, photographs, tapes, messages, maps, sketches, reports, and other information (classified or unclassified) relating to the whereabouts and status of each person the inquiry covers;

Gather information relating to actions taken to find the person, including any evidence of the whereabouts and status of the person arising from such actions;

Arrive at your findings and recommendation by majority vote and ensure that your findings are supported by a preponderance of the evidence; and

Maintain a record of your proceedings.

Your deliberations will be in closed sessions and you must arrive at your findings and recommendations by majority vote.

Within 30 days of the end of your deliberations, you will provide a complete written report to AFPC/CC which will include:

A discussion of the facts and evidence you

consider; Your findings and conclusions;

A recommendation for a determination by AFPC/CC concerning the whereabouts and status of the mission person; and

Disclosure of whether you considered or used classified information during your proceedings.

(Rank)(Full name) has been appointed as Missing Person's Counsel. (He/She) shall have access to all facts and evidence considered by the Board during these proceedings;

(He/She) will assist the Board in ensuring that all appropriate information concerning the case is collected, logged, filed, and safeguarded;

(He/She) will observe all official activities of the Board during these

proceedings; (He/She) may question witnesses before the Board;

(He/She) may submit information to the Board relative to the disappearance and status of the missing person; and

(He/She) will monitor and participate in the deliberations of the Board.

A missing person's counsel will review the report of the Board and submit an independent review of that report which will be made an official part of the record of the Board.

Before you begin your inquiry, are there any questions from the Board members or from the Missing Person's counsel on the matters I just covered?

**REVIEW OF EVIDENCE:**

**PRESIDENT:** The following evidence will be reviewed by this Board of Inquiry:

(List or identify the matters contained in the case file)

(Rank)(Name), as the Missing Person's Counsel, do you have any additional matters to present to the Board? (If there are additional matters, the Missing Person's Counsel should list or identify them)

**PRESIDENT:** At this point, I am going to recess the Board in order to give everyone time to review the evidence presented. (The Board should recess for as long as necessary to review the matters presented)

(Board reconvenes after recess)

**PRESIDENT:** This Board will come to order. Did everyone have enough time to review the matters presented to this Board? In light of what we have just reviewed, does any Board member or the Missing Person's Counsel desire any additional information? (If a Board member or the Missing Person's Counsel desires additional information, AFPC/DPFCM personnel can assist in determining its availability.)

**EXAMINATION OF WITNESSES:** (Omit if no witnesses are called to the Board)

**PRESIDENT:** The following individual(s) (was/were) identified as witnesses for this Board: (List and identify the witness(es)) Does the Missing Person's Counsel desire to have any additional witnesses called before this Board? (If so, have the Missing Person's Counsel list and identify the witness [es])

**PRESIDENT:** Let's call the first witness.

**LEGAL ADVISOR:** Do you (swear/affirm) that the evidence you are about to give shall be the truth, the whole truth, and nothing but the truth [so help you God]?

**PRESIDENT:** Please state your full name (and Rank).

**PRESIDENT:** (Military) What is your organization and station? (Civilian) What is your current address?

**PRESIDENT:** This Board is convened for the purpose of determining the whereabouts and status of (Rank)(Full name). Could you please tell the Board what information you have relative to the whereabouts and status of (Rank) (Full name)?

**PRESIDENT:** Does any Board member wish to question this witness?

**PRESIDENT:** Does the Missing Person's Counsel wish to question this witness? (Proceed with other witnesses in the same fashion, giving the above oath.)

**CLOSING FOR DELIBERATIONS:**

**PRESIDENT:** (If witnesses were called: That completes all the witnesses.) Just so that everyone is aware of what documentary evidence the Board intends to consider, let me state that we intend to consider the following documents: (list documents to be considered)

**PRESIDENT:** Does any Board member wish to take up any matter(s) before I close the Board for deliberations? Does the Missing Person's Counsel wish to take up any matter(s) before I close the Board for deliberations?

**PRESIDENT:** This Board is closed for deliberations.

**FINDINGS AND RECOMMENDATION:**

**PRESIDENT:** After reviewing and deliberating on all the matters presented to this Board on the whereabouts and status of (Rank) (Full name), the Board makes the following Findings and Recommendation:

**PRESIDENT:** This Board is closed