ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [redacted]

BOARD DATE: 30 August 2024

DOCKET NUMBER: AR20230003027

APPLICANT REQUESTS: in effect, correction of DD Form 261 (Report of Investigation – Line of Duty and Misconduct Status) to show he incurred his injury in the line of duty.

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

- DD Form 149 (Application for Correction of Military Record)
- Extract, Army Regulation (AR) 600-8-4 (Line of Duty Policy, Procedures, and Investigations)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DD Form 261 with associated documents
- DA Form 2 (Personnel Qualification Record – Part I)
- DA Form 2-1 (Personnel Qualification Record – Part II)
- Department of Veterans Affairs (VA) letter
- VA Disability Rating Decision

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states, in effect, he sustained a traumatic brain injury (TBI) in an accident and the subsequent line of duty investigation found him not in line of duty due to his own misconduct. As a result of that finding, he has been unable to receive the medical care he needs from the VA. The applicant provides additional information in a self-authored statement:

a. The applicant states, when he was nine, his father died, and his mother had to work two jobs to support the family; while in school, he was a good student, and he went to a trade school because there was no money for college. When the opportunity arose to enlist in the Army, he decided to join for the education benefits. During basic combat training, he passed the entrance tests for West Point, but he opted not to go

because it would have obligated him for seven years. He points all this out to prove that he was a smart kid who was able to learn.

b. The Army stationed the applicant in Germany, and in or around the fall of 1979, he went to the base club near his barracks; he does not remember much from that night except that he was drunk, and he recalls going back to the barracks. The next thing he knew, he was waking up in the hospital; they told him he had sustained a head injury after falling from a barracks window.

c. Since incurring the head injury, the applicant has been unable to read any books or articles that are longer than one page; he reads a page and, when he flips to the next, he cannot remember what he just read. He has tried to take college classes, but it was just too hard.

d. The applicant's first marriage failed because his wife did not know how to handle a person with a head injury; they fought constantly because he would procrastinate and forget stuff. The applicant had his own construction company for a while, but his forgetfulness made it impossible to make any money; he would drive to the lumber yard for materials but would never get everything he needed, forcing him to go back again.

e. Since falling out of the window, the applicant has had nightmares of someone pushing him from behind; he can hardly get a full night's rest. In addition, he suffers from debilitating and severe headaches. Because of the foregoing issues, his wife suggested he get help from the VA.

f. When he first applied for VA benefits, the applicant told the neurologist that his medical problems were caused by the fall, and, because there was documentation, his injury would be easy to prove. When he later learned VA had denied his claim, the Veteran Services Officer told him the reason was because of an unfavorable line of duty investigation that claimed his injury resulted from his own misconduct. The applicant was completely surprised as he had left the Army with an honorable discharge.

g. The applicant acknowledges that he was drinking, but his horrible accident could have happened to anyone. Upon his release from the hospital, he just went back to work and heard nothing more about the accident; a few years later, he decided to get out of the Army and left honorably. The applicant declares, "I need the VA to help me as no one knows how to deal with my head injuries and PTSD sustained on active duty as well I cannot work, causing me and my family a financial hardship. I was never notified of the Line of Duty when I was in or given any due process to provide any mitigation or litigation, only a surprise being told by my service officer of the decision well after my discharge."

3. The applicant provides documents from his service record, to include a copy of his DD Form 261 and the associated line of duty investigation documents, and a VA letter and rating decision announcing the denial of his benefits claim because his medical condition was not incurred in the line of duty.

4. A review of the applicant's service records shows the following:

a. On 16 February 1979, the applicant enlisted into the Regular Army for 2 years; he was 19 years old. Upon completion of initial entry training and the award of military occupational specialty 12E (Atomic Demolition Munitions Specialist), orders assigned him to an engineer company in Germany, and he arrived at his new unit, on 27 June 1979.

b. At 0239 hours, 30 September 1979, medical authority admitted the applicant to the hospital after he fell from a third story window and sustained a closed head injury.

(1) DA Form 2173 (Statement of Medical Examination and Duty Status), completed on 1 October 1979, states in section I (To Be Completed by Attending Physician or Hospital Patient Administrator) that, in the attending physician's opinion, the applicant was under the influence of alcohol at the time of the accident; (DA Form 4254-R (Request for Private Medical Information) later reported the applicant's blood alcohol level was 1.55 mg/ml (milligrams per 100 milliliters)).

(2) On 12 October 1979, the applicant's commander (Second Lieutenant (2LT) J__ J. D__) completed section II (To Be Completed by Unit Commander or Unit Adviser). The commander wrote:

(a) "SM (service member) had been drinking heavily during the evening at the... Barracks NCO/EM (Noncommissioned Officer/Enlisted Member) club. He participated in a 'wet T-shirt' contest and won the contest. Took the prize money and bought beers for his friends. He then returned to his room (at approximately 2345). His roommate was in the room at the time but did not hear him come in. SM does not remember any of the circumstances surrounding his injury."

(b) "Apparently, he went to sleep (his bed parallels the window) and a short time thereafter fell out of the window. The individuals in the room below saw him fall past their window and notified the front gate MPs (military police) and ambulance. SM was taken to 5th General Hospital by ambulance and then transferred to 2nd General Hospital, Landstuhl."

c. On 16 October 1979, the applicant's higher headquarters appointed the applicant's company commander (2LT J__ J. D__) as the line of duty investigating officer, under the provisions of Army Regulation (AR) 600-33 (Line of Duty

Investigations). On 7 November 1979, medical authority released the applicant from the hospital and returned him to duty.

d. On 9 November 1979, 2LT D__ submitted the results of his line of duty investigation, using a DD Form 261; he recommended a finding of not in line of duty due to own misconduct. On 19 November 1979, the Reviewing Authority (Headquarters, VII Corps) approved the findings and recommendation, and, on 31 December 1979, Headquarters, U.S. Army Europe and Seventh Army approved the not in line of duty due to own misconduct determination on behalf of the Secretary of the Army. (Per AR 600-33, paragraph 3-9 (Notification of Completed Actions), the approving authority was required to annotate on the DD Form 261 that the individual investigated was provided a copy of the DD Form 261; additionally, the entry had to show the date received. The applicant's DD Form 261 is missing this information).

e. On 10 February 1981, the applicant completed his tour in Germany and orders reassigned him to Fort Dix, NJ for separation processing. On 10 February 1981, based on an early release policy, the Army honorably released the applicant from active duty and transferred him to the U.S. Army Reserve. His DD Form 214 shows he completed 1 year, 11 months, and 25 days of his 2-year enlistment contract.

5. On 11 September 2023, the U.S. Army Human Resources Command (HRC) provided an advisory opinion. After summarizing the events surrounding the applicant's injuries, HRC wrote:

a. "The AHRC Surgeon General's office opined the medical evidence demonstrated the [applicant] was in a qualified active-duty status when diagnosed with a medical condition of closed head injury, moderate secondary to fall on 30 September 1979. The [applicant] was taken to the hospital via ambulance after 'allegedly' falling out of his barracks window. He was treated for closed head injury, alcohol intoxication, seizure disorder, subarachnoid hemorrhage, post-traumatic, cortical blindness and multiple ocular muscle palsies with nystagmus that resolved."

b. The AHRC Surgeon General continued, "The timeline documents the [applicant] was able to return to his barracks room without incident after 2320hrs, retired to bed, then allegedly fell out of the third-floor window and suffered a closed head injury and subsequent sequelae...The unit commander further documented...that the [applicant's] bed parallels the window. In the DD 261, the investigating officer (IO) documented there were no witnesses to the fall, no foul play involved, and went on to opine, based on a twice the level BAC reported, that the [applicant] was severely intoxicated, and went on to postulate and document 'that the Soldier may have tried to expectorate/regurgitate out the window, but nobody knows for sure.' Based on the IO's opinion and postulation, he concluded that the misuse of alcohol was the proximate cause of the accident and gave a finding of Not In Line of Duty Due to Own Misconduct. There was no

appeal...After review of the records, it is the medical opinion that the medical condition head trauma with subsequent sequelae was service incurred."

c. HRC concludes, "As far as the guidelines that are current written in AR 600-8-4 (Line of Duty Policy, Procedures, and Investigations), an IO must have a preponderance of evidence (Findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion) to reach a determination. In the case of [applicant], even though his alcohol level was .155, the IO assumed that the Soldier was severely intoxicated and 'may have' tried to expectorate/regurgitate out the window. This determination would not meet the minimum standard today for an NLD-DOM determination as written."

6. On 21 September 2023, the Army Review Boards Agency forwarded the applicant a copy of the advisory opinion for review and the opportunity to submit a statement or additional evidence on his own behalf; the applicant did not respond.

7. MEDICAL REVIEW

The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

The applicant is applying to the ABCMR requesting a reversal of the "Not in Line of Duty – Due to own Misconduct" findings the closed head injury he sustained when he fell from his third-floor barracks window. He states:

> "I was never notified of unfavorable Line of Duty (LOD) or given Due Process IAW AR 600-8-4. I found out that LOD was in my records when I applied for VA benefits and wad denied for a traumatic brain injury that was sustained by the accident. I have a serious TBI due to this in my and was told I am not eligible for medical or compensation benefits from the VA."

The Record of Proceedings details the applicant's military service and the circumstances of the case.

A 31 December 1979 Report of Investigation Line of Duty and Misconduct Status (DD Form 261) states the applicant spent the night of 30 September "in the Coffey Barracks NCO/EM Club drinking and having a good time." After returning to the barracks that

night, he sustained a closed head injury in an unwitnessed fall from his third-floor barracks window. It states he was not a sleepwalker and that a blood alcohol test obtained shortly after he arrived at the hospital showed:

> " .. he was severely intoxicated, nearly twice the normal intoxication level of 0.8mg/ml. This intoxication level show that the service member did intentionally misuse/abuse alcohol during the evening. There is no evidence that foul play was involved. The only possible case of PVT [Applicant]'s fall is his intoxication. He may have tried to expectorate/regurgitate out the window but nobody knows for sure.
>
> Whatever the case may be, if he was not so intoxicated, he would not have fallen out the window. Therefore, PVT [Applicant] did intentionally abuse alcohol and that abuse was the proximate cause of his fall. Paragraph 2-5, AR 600-33 states that in this instance, the findings will be NOT IN LINE OF DUTY – DUE TO MISCONDUCT."

His discharge summary shows he was admitted for 38 days and lists his discharge diagnoses:

> "1. Closed head injury, moderate, secondary to fall 30 September 1979.
>
> 2. Ethanol intoxication (blood ethanol 1.55).
>
> 3. Grand mal seizure, secondary to diagnoses 1 and 2.
>
> 4. Subarachnoid hemorrhage, post-traumatic, suspected, not proven.
>
> 5. Cortical blindness, suspected, not proven, secondary to diagnosis 1, resolved.
>
> 6. Multiple extraocular muscle palsies, with nystagmus, related to diagnosis 1, resolved."

Paragraph 2-5a of AR 600-33, Line of Duty Investigations (16 December 1974) states:

> "Any disease or injury resulting in incapacitation directly attributed to the intentional abuse of alcohol or other drugs is regarded as "not in line of duty-due to misconduct."

Paragraph 2-5b of AR 600-33 states in part:

> "The term "abuse" as it applies to alcohol consumption refers to irresponsible, excessive, or improper use. This includes, but is not limited to the amount, type, and relative intoxicating effect of the alcohol used; the period of time over which it was used; and the physical condition of the user."

Paragraph 2-5c of AR 600-33 states:

> "That portion of the hospitalization during which a member is physically incapacitated through an acute or transient disease or injury (incurred through misconduct) which occurred as a result of the abuse of alcohol or other drugs, provided that it is for a continuous period in excess of 24 hours, will be considered "Not in line of duty-due to own misconduct."
>
> The remainder of the period of hospitalization, treatment, or rehabilitation will be considered as administrative absence from duty not requiring an LD finding. Periods of hospitalization of less than 24 hours for abuse of alcohol or other drugs do not require an LD determination."

This standard has been maintained and is found in Rule D-3a of AR 600-8-4, Line of Duty Policy, Procedures, and Investigations (15 March 2019):

> "a. Incapacitation because of the abuse of alcohol or other drugs (see glossary; drugs is a broad term that includes such intoxicants as Difluorothane Toxicity and synthetic marijuana) that results in injury, illness, disease, or death is due to misconduct and is NLD [Not in Line of Duty]. This rule applies to the effect of the drug on the Soldier's conduct, as well as to the physical effect on the Soldier's body.
>
> Any actions that are induced by voluntary ingestion of alcohol or drugs that cause injury, illness, disease, or death are misconduct and are NLD.
>
> That the Soldier may have had a pre-existing physical condition that caused increased susceptibility to the effects of the drug does not excuse the misconduct. Abuse of alcohol or drugs must be proven as the proximate cause for the injury, illness, aggravation, or death.
>
> While merely drinking alcoholic beverages is not misconduct, one who voluntarily becomes intoxicated is held to the same standard of conduct as one who is sober. Intoxication does not excuse misconduct.

The medical advisor non-concurs with the findings in the United States Army Human Resources Command's (USAHRC) 11 September 2023. Their advisory uses the fact the investigating officer's (IO) assumptions and postulations somehow invalidate the facts of the case. While his assumptions may have been inaccurate or even inappropriate, the facts remain.

The applicant had been drinking. The applicant's blood alcohol was 1.55 mg/ml sometime after the fall, nearly twice the legal limit of 0.8 mg/ml. From the Cleveland Clinic website:

> "Here's how different percentages of blood alcohol content (BAC) can affect you physically and mentally:
>
> BAC 0.08%: At this percentage, you may have reduced muscle coordination, find it more difficult to detect danger and have impaired judgment and reasoning.
>
> BAC 0.10%: At this percentage, you may have a reduced reaction time, slurred speech and slowed thinking.
>
> BAC 0.15%: At this percentage, you may experience an altered mood, nausea and vomiting and loss of balance and some muscle control.
>
> BAC 0.15% to 0.30%: In this percentage range, you may experience confusion, vomiting and drowsiness."
>
> (https://my.clevelandclinic.org/health/diagnostics/22689-blood-alcohol-content-bac)

The applicant's blood alcohol level, which would have been higher than 1.55 mg/dl (0.155%) at the time of the accident, was more than enough to cause the impairments leading to his fall from his own barracks window. At this elevated level, the applicant would have been experiencing a loss of balance and some muscle control as well as confusion.

That the IO may have inappropriately opined the applicant "may have" tried to expectorate/regurgitate out the window is irrelevant: The applicant had voluntarily abused alcohol and his inebriation was the proximate cause of his fall from the window. The IO stated no foul play was involved, the applicant was not a sleepwalker, and it is unreasonable, especially without contradicting evidence, to think his level of intoxication was not the proximate cause for his fall from the window of his own barracks room.

USAHRC's asserts the original finding was not supported by a preponderance of evidence, that the "Findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion) to reach a determination. However, there is no evidence introduced that would lead to any other conclusion. The applicant was intoxicated to a point that would have led to confusion while negatively affecting his balance and muscle control and this resulted in a fall from the window in his barracks room, a room he was very familiar with.

There is no probative evidence and certainly not the required preponderance of evidence supporting a conclusion the applicant's injuries were anything other than "Not In Line Of Duty – Due To Own Misconduct."

It is the opinion of the ARBA Medical Advisor that a reversal of "Not In Line Of Duty - Due To Own Misconduct" determination is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records, medical review and the U.S. Army Human Resource Command (AHRC)– Casualty and Mortuary Affairs Operations Division advisory opinion, the Board considered the advising opinion of the ARBA Medical Advisor that a reversal of "Not In Line Of Duty - Due To Own Misconduct" determination is not warranted. However, the Board concurred with the AHRC advising opinion finding under current standards today, the determination from the IO would not meet the criteria for NLD-DOM.

2. The Board determined based on the advisory opinion provided by AHRC there is sufficient evidence to grant relief and correct the applicant's DD Form 261 (Report of Investigation – Line of Duty and Misconduct Status) to reflect that the injury was incurred in the line of duty. The Board noted the applicant sustained a closed head injury on 30 September 1979 after allegedly falling from a third-story barracks window. The original line of duty investigation concluded the injury was not in line of duty due to own misconduct, citing alcohol intoxication as the proximate cause. However, the Board acknowledged the applicant was in a qualified active-duty status when diagnosed with a closed head injury, moderate secondary to fall. The medical documentation supports that the injury and its sequelae including cortical blindness and ocular muscle palsies were service incurred.

3. Evidence shows the applicant returned to his room without incident and retired to bed. The fall occurred sometime thereafter. The investigating officer (IO) acknowledged there were no witnesses and no foul play. However, the IO's conclusion was based on postulation that the applicant may have attempted to regurgitate out the window due to intoxication. The Board found this speculative reasoning does not meet the current evidentiary standards outlined in AR 600-8-4, which require a preponderance of evidence to support a finding of misconduct. Furthermore, the HRC advising opine determined that the original determination would not meet today's standards for a finding of "Not in Line of Duty – Due to Own Misconduct." The Board noted that the IO's assumption of severe intoxication and speculative cause of the fall lacks sufficient factual basis under current policy.

4. The Board agreed the DD Form 261 lacks documentation that the applicant was provided a copy of the investigation findings, as required by AR 600-33. This procedural oversight further undermines the integrity of the original determination. Based on the totality of evidence, including the advisory opinion and current regulatory standards, the Board found that the applicant's injury was incurred in the line of duty. As such, the Board granted relief for correction of the DD Form 261 to reflect this finding of in the line of duty.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
XXX	XXX	XXX	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 Army records of the individual concerned be corrected to show the applicant's DD Form 261 (Report of Investigation – Line of Duty and Misconduct Status) the incurred his injury in the line of duty.

X //SIGNED//

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. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency

with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicant's (and/or their counsel) prior to adjudication.

3. Army Regulation (AR) 600-33, in effect at the time, prescribed policies and procedures for the completion of line of duty investigations.

a. Chapter 1 (General), paragraph 1-4 (Explanation of Terms):

- In Line of Duty – injury/disease incurred, contracted, or aggravated while the member was on active duty
- Not In Line of Duty – Not Due to Own Misconduct – injury/disease incurred, contracted, or aggravated while not on active duty and not aggravated by service
- Not In Line of Duty – Due to Own Misconduct – injury/disease was proximately caused by Soldier's intentional misconduct or willful negligence
- Simple Negligence – the omission of that care which a person of ordinary prudence usually takes in the same or like situation; an injury or disease caused solely by simple negligence is in the line of duty
- Willful Neglect – a conscious and intentional omission of the proper degree of care under the circumstances; a reckless disregard of the consequences of an act as they may affect life or property was presumed to be willfulness
- Intentional Misconduct – any intentional wrongful or improper conduct
- Proximate Cause – the connecting relationship between an act and a resulting disease or injury; as a general rule, it had to appear that, under the circumstances, it could reasonably have been anticipated that the injury might result from a course of conduct
- Substantial Evidence – such relevant information as a reasonable mind could accept as adequate to support a conclusion; more than a trace of evidence, but not so much as would be needed to convince all men of the conclusion

b. Chapter 2 (Controlling Factors in LD (line of duty) Determinations).

(2) Paragraph 2-3 (Basic Considerations).

(a) An injury or disease was to be determined as having been incurred in line of duty and not due to the member's misconduct, except when there was substantial evidence that the injury or disease was:

[redacted]onal misconduct or willful neglect of the

- Incurred or contracted during a period of unauthorized absence
- Incurred or contracted while not on active duty and not aggravated by service

(b) In cases involving a determination of "Not in Line of Duty – Due to Own Misconduct," a statement, such as a Standard Form 544 (Clinical Record – Statement of Patient's Treatment) was required to be obtained from the medical treatment facility; the statement was to indicate the period of incapacitation attributable to the injury or disease and which resulted in the unfavorable line of duty finding.

(3) Paragraph 2-4 (Intentional Misconduct or Willful Negligence). Misconduct for line of duty purposes had to be intentional; however, intent could be expressed or implied. Negligence also had to be willful.

(4) Paragraph 2-5 (Intemperate Use of Alcohol or Other Drugs). Any disease or injury that resulted in incapacitation that was directly attributable to the intentional abuse of alcohol or other drugs was to be regarded as "not in line of duty-due to misconduct." The term "abuse," as it applied to alcohol consumption, referred to irresponsible, excessive, or improper use. This included, but was not limited to, the amount, type, and relative intoxicating effect of the alcohol used; the period of time over which it was used; and the physical condition of the user.

c. Chapter 3 (Processing LD (line of duty) Actions.

(1) Paragraph 3-5c (Formal Investigations). A formal line of duty investigation was required when the injury or death involved the intemperate use of alcohol or other drugs.

(2) Paragraph 3-9 (Notification of Completed Actions). In cases involving injury of disease, the final approving authority was responsible for notifying the individual who was subject to the formal line of duty investigation of the investigation's results; that he or she had the right to file an appeal; and that the individual was provided a copy of the report. Further, the approval authority was to annotate the fact that the report was delivered to the individual, and the entry was to show the delivery date.

(3) Paragraph 3-10 (Appeals). The individual could file an appeal, in writing, within 45 days after receipt of notification of the finding.

(4) Paragraph 3-11 (Revision or Correction of Line of Duty Findings). The Secretary of the Army, or The Adjutant General acting for him, could at any time change a finding made under this regulation to reflect the correct conclusion based upon the facts.

d. On 15 June 1980, the Army issued an updated and revised version of AR 600-33. Under paragraph 2-3 (Basic Considerations), the Army added the following:

(1) "Standard of Proof," which stated, "Findings must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact, considering:"

- "All reasonable inferences, deductions, and conclusions drawn from all facts presented"
- "All the above elements in relation to each other"
- "The weight of the evidence is not determined by the number of witnesses or exhibits, but by...considering all the evidence; evaluating factors such as the witness' behavior, opportunity for knowledge, information possessed, and ability to recall and relate events"
- "Other signs of truth"

(2) "Proximate Cause. The presence of intentional misconduct or willful negligence supports a finding that the injury happened "Not in Line of Duty – Due to Own Misconduct" only if substantial evidence and a greater weight of evidence than supports any different conclusion establishes that it was the proximate cause...In general, it must appear that under the circumstances the member could have reasonably expected that the injury or disease might be caused by his conduct. When misconduct is only a contributing cause, as opposed to the proximate cause, the disease or injury should not be found to have been caused by misconduct."

//NOTHING FOLLOWS//