

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 April 2024

DOCKET NUMBER: AR20230010603

APPLICANT REQUESTS: correction of a DA Form 2173 (Statement of Medical Examination and Duty Status) and DD Form 261 (Report of Investigation Line of Duty (LOD) and Misconduct Status) to show her husband's death occurred in line of duty (ILD).

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

- DD Form 149 (Application for Correction of Military Record)
- Criminal Investigation Division (CID) Form 94 (Agent's Investigation Report), dated 21 December 2009
- third-party statement, taken by CID on 23 December 2009
- CID Form 94, dated 24 December 2009

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, the widow of the deceased former service member (FSM), states:

a. The correction she is seeking is to have the FSM's LOD determination overturned to show his death occurred ILD. She is seeking the correction in order to qualify for survivor benefits entitlements. During her husband's tenure, he requested help and the physician he was seeing, while down range, stated she could not provide the services her husband needed and that he should be sent back to the United States for further treatment due to his post-traumatic stress disorder (PTSD). Her husband told his battle buddy, which is documented in the report, he knew how to kill himself with canned air; he did not need his weapon. His battle buddy asked to be moved out of the room they shared and shared this with their chain of command. This was his second deployment, and he was having a really tough time being there. He needed help and he did not receive it, and the help he received was not enough to save his life.

b. She includes copies of some of the investigative reports that were provided to her. It has taken some time for her to do this because she could not bring herself to go back and look at the reports. As she reviewed them, it clearly shows her husband was suicidal and his chain of command was aware, as well as other Soldiers with whom he served. The CID Report of Investigation states, Specialist (SPC) X stated he was afraid of what her husband would do to himself or others and asked to be moved to another housing unit. This same individual spoke to her husband, in which her husband stated to him that he was trying to commit suicide and he knew how to do it with canned air. The same SPC reported this and still nothing was done.

c. The FSM was seeing a doctor back in November 2009 at the Camp Taji Combat Stress Center, who had diagnosed him with PTSD from his previous deployment and it was suggested by her for him to be returned to the United States because the services he needed could not be accommodated in theater. She implores the Board to relook the decision that was made years ago that has affected them so greatly. Her husband was a good Soldier who received the Army Good Conduct Medal in July 2008, commendation and achievement medals, and numerous badges. She leaves the Board with this one last thought; he needed help and asked for it, but no one listened. She is now asking for the Board's help.

3. The FSM enlisted in the Regular Army on 19 July 2005.

4. A DA Form 2173 shows the FSM was found unconscious in a latrine on Camp Taji on 10 December 2009 and medical officials pronounced him dead at the scene; the nature of the injury, which resulted in death, was self-inflicted toxic inhalation. The Certificate of Death shows the disease or condition directly leading to death was difluoroethane toxicity and the other significant conditions cardiomegaly and left ventricular hypertrophy; the mode of death was listed as accident.

5. A DD Form 261 shows an investigating officer (IO) determined the FSM's death was due to the illicit "huffing" use of Dust-Off compressed gas containing the ingredient of 1,1-difluoroethane. The IO stated the final Armed Forces Medical Examiner report includes the toxicology results, autopsy report, and Certificate of Death indicating the presence of 1,1-difluoroethane in the FSM's blood at time of death. The CID 2nd Status Report findings released on 21 January 2010, stating the purchase of Dust-Off by the FSM, and presence of item at the scene of death, are corroborated by the Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) investigation findings dated 25 December 2009. Findings also report previous inhalant abuse by the FSM in violation of General Order Number 1, demonstrating a pattern of misconduct. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations), Appendix B, states death directly caused by the individual's misconduct is not LOD.

6. The Commanding General Officer approved the IO's findings on 29 January 2010.
7. During the processing of this case, an advisory opinion was obtained from the U.S. Army Human Resources Command (AHRC) Casualty and Mortuary Affairs Operations Division. It states:
  - a. The FSM passed on 10 December 2009 at Camp Taji, Iraq from an accidental overdose of difluoroethane toxicity. After reviewing the letter from the applicant, AHRC requested a behavioral health assessment into the case.
  - b. The behavioral health assessment concluded the FSM's mental health condition that contributed to his loss of life were due as a result of his military service and his command not removing him from theater in a timely manner after multiple recommendations by medical and behavioral health providers over the course of four months. The FSM's mental condition deteriorated significantly while in Iraq, and he made multiple suicidal gestures before finally completing suicide.
8. The advisory opinion was provided to the applicant and given the opportunity to provided additional comments or evidence. No response was received.
9. The applicant provided CID Reports of Investigation and a third-party statement and highlighted sections indicating that medical personnel had recommended the FSM's return to the United States due to his mental health. The documents also show the FSM's chain of command was informed of the FSM's suicidal intentions.

#### 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 FSM's death was directly linked to a mental health condition for which he did not receive timely adequate care. Based on a preponderance of the evidence, the Board determined the FSM's record should be corrected to show his death occurred in the line of duty.

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 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 his death occurred in the line of duty.

9/18/2024

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. 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. Army Regulation 600-8-4 prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. The Army LOD Program is a commander's program which essentially protects the interest of both the Soldier and the U.S. Government where service is interrupted by injury, illness, disease, or death. LOD investigations determine duty status at the time of incident and whether misconduct was involved and, if so, to what degree. Additionally, LOD investigations may be required to determine an existed prior to service (ETPS) condition, and, if so, determine service aggravation.

b. A formal LOD investigation is a detailed investigation that normally begins with a DA Form 2173 completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an IO who completes the DD Form 261 and appends appropriate statements and other documentation to support the determination, which is submitted to the general court martial convening authority for approval.

c. An injury, disease, or death is presumed to be ILD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

3. Army Regulation 600-8-4, paragraph 4–12 (Suicide or attempted suicide) states:

a. Suicide refers to a death resulting from purposeful action to result in one's own death. In order for suicide to constitute misconduct, the act of self-destruction must be intentional. A Soldier who is not mentally sound is incapable of forming intent, which is an essential element of intentional misconduct.

b. Due to the human instinct for self-preservation, suicide and bona fide suicide attempts create a rebuttable presumption that a Soldier who died by or attempted suicide lacked mental responsibility and was unable to comprehend the nature of or to control their actions. A failure to rebut this presumption will support a finding of ILD.

c. In the event of a suicide or attempted suicide, the mental health provider must identify, evaluate, and document mental and emotional disorders. A Soldier may not be held responsible for their acts if the Soldier was unable to comprehend the nature and quality or wrongfulness of their actions as a result of mental disorder or disease. Self-inflicted injuries or death arising from a Soldier's actions during such time that the Soldier lacked the mental capacity to appreciate the nature and quality, or wrongfulness of the Soldier's self-inflicted injury or death is considered "ILD."

d. When conducting an LOD investigation for a suicide or attempted suicide, the IO must request a behavioral health opinion to determine whether the Soldier was mentally sound (capable of forming intent) at the time of the incident, to be determined by all

available evidence. The question of mental soundness can only be resolved by inquiring into and obtaining evidence of the Soldier's social background, actions, and mood immediately prior to the suicide or suicide attempt, to include troubles that might have motivated the incident and examinations or counseling by specially experienced or trained personnel. (Personal notes or diaries of a deceased Soldier are valuable evidence).

e. The IO must consider the Soldier's deployment history and assigned duties while deployed when investigating suicide cases. In all cases of suicide or suicide attempts, a behavioral health officer will review the evidence collected to determine the bio-psychosocial factors that contributed to the Soldier's desire to end their life. The behavioral health officer will render an opinion as to the probable causes of the self-destructive behavior and whether the Soldier was mentally sound at the time of the incident. If the Soldier is found mentally unsound, the behavioral health officer should determine whether the Soldier's mental condition was an EPTS condition aggravated by military service or was due to the Soldier's own misconduct.

f. When manner of death cannot be determined by local or military medical authorities (for example, manner of death is "undetermined" but evidence suggests or supports suicide) further investigation or action may be required. This normally includes a coordinated effort by law enforcement and medical examiners to amend a previously issued death certificate. In some cases, the Armed Forces Medical Examiner may be asked to complete a full forensic psychological autopsy to assist in the process. This report is a thorough investigation into the Soldier's life history and may take in excess of one year to complete. This request is made through CID.

4. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//