

IN THE CASE OF: [REDACTED])

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240004161

APPLICANT REQUESTS: correction of the line of duty (LOD) determination of her husband, a deceased former service member (FSM), to reflect a finding of in the LOD instead of not in the LOD – due to own misconduct.

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

- DD Form 149 (Application for Correction of Military Record)
- applicant's partial self-authored statement
- table of contents
- three DA Forms 2166-9-2 (Noncommissioned Officer Evaluation Report (NCOER) (Staff Sergeant (SSG) – First Sergeant (1SG)/Master Sergeant (MSG), covering the periods ending 18 July 2016, 18 July 2017, and 14 January 2018
- Marriage Certificate, [REDACTED]
- DA Form 93 (Record of Emergency Data), date illegible
- DA Form 8003 (Command Referral for a substance use disorder (SUD) Evaluation), 4 June 2020
- DA Form 4856 (Developmental Counseling Form), 4 June 2020
- 4th Battalion, 3rd Special Forces Group (Airborne) memorandum, 4 June 2020
- DD Form 2873 (Military Protective Order), date illegible
- DA Form 288 (Report to Suspend Favorable Actions (Flag)), 4 June 2020
- DA Form 4856, date illegible
- three DA Forms 4187 (Personnel Action), all 9 June 2020
- DD Form 458 (Charge Sheet), 9 June 2020
- [REDACTED] Sheriff's Office Offense/Incident Report, 9 June 2020
- Final Autopsy Report, 10 June 2020
- two Headquarters, 1st Special Forces Command (Airborne) memoranda, both 11 June 2020
- DD Form 616 (Report of Return of Absentee), 12 June 2020
- Death Certificate, [REDACTED]
- DA form 4254 (Request for Private Medical Information), 17 June 2020
- Toxicology Report, 26 June 2020
- DD Form 1300 (Report of Casualty), 6 July 2020
- DA Form 7747 (Commander's Suspected Suicide Event Report), 7 July 2020

- multiple Investigating Officer (IO) Memoranda for Record (MFR), 22 July 2020
- five DA Forms 2823 (Sworn Statement), redacted, dates illegible
- DA Form 2173 (Statement of Medical Examination and Duty Status), 23 July 2020
- Behavioral Health Officer Review for LOD MFR, 24 July 2020
- IO MFR, Chronology of Investigation, 4 August 2020
- DA Form 1574-1 (Report of Proceedings by IO), 4 August 2020
- IO Formal LOD Investigation memorandum, 4 August 2020
- DD Form 261 (Report of Investigation LOD and Misconduct Status), 2 September 2020
- Headquarters, 1st Special Forces Command (Airborne) Commanding General MFR, 3 September 2020
- DA Form 2173, 8 September 2020
- Headquarters, U.S. Army Medical Command, Freedom of Information Act (FOIA) Office memorandum, 25 September 2020
- Casualty Information Paper, undated
- DA Form 1569 (Transcript of Military Record), 25 February 2021
- U.S. Army Human Resources Command (AHRC), Casualty and Mortuary Affairs Operations Division letter, 15 March 2021
- Headquarters, 1st Special Forces Command (Airborne), Office of the Judge Advocate General letter, 21 April 2021
- Headquarters, U.S. Army Special Operations Command, FOIA Office letter, 23 April 2021
- Department of Veterans Affairs (VA) letter, 7 February 2023
- five letters of support/character statements
- Headquarters, U.S. Army Special Operations Command MFR, 19 April 2024
- 507 pages of service medical records
- 100 pages of additional behavioral health medical records

#### 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:

a. She is requesting reconsideration of the AHRC LOD determination that her husband's death was incurred in the LOD in lieu of not in the LOD, with all associated benefits and entitlements retroactive to the date of his death, 9 June 2020.

b. The LOD determination should be overturned based on the evidence provided, to include the Memorandum for Behavioral Health Officer Review for LOD and the recommendation of her husband's unit.

c. She lost her husband to suicide in [REDACTED]. The local investigation stated he was not of sound mind; however, his LOD was denied by the U.S. Army Casualty and Mortuary Affairs Operations Division, based on the belief that he was in his right mind when he took his own life. As someone who knew his character, she disagrees with this ruling. Upon reading this letter and viewing the evidence provided, it is her hope the Board will develop a clearer picture of the type of man her husband was and, with that clarity, see he was not his true self at the time of his death.

d. Many words can be used to describe her husband: Witty, clever, funny, warm, dedicated father, stellar soldier; the list goes on and on. He loved people. He never met a stranger and was the type of person who made friends wherever he went. He was a kind-hearted father and would go to the ends of the earth for his children, always saying he was working to build a good life not only for his children, but for future generations. Although his childhood was difficult for him, he developed a humanitarian spirit. He was passionate about donating to feed hungry children and once bought new shoes for children in need at the local elementary school.

e. He found his niche in life when he became a Soldier. As an all source analyst, he loved the challenge of gathering information and using his expertise to provide critical support for countless missions. As he moved into the role of NCO, developing the skills of the Soldiers he mentored became a new passion for him. He was dedicated to not only being the best version of himself but fostering the next generation of Soldiers. He cared deeply about the human side of his battle buddies, and he often was the person others would turn to when they were struggling, looking to him for wisdom and guidance. He helped his Soldiers celebrate the birth of their children and consoled them during times of great loss. Even while developing the professional side of his Soldiers, he paid attention to the human element.

f. In the year leading up to his death, he was training and preparing to move forward in his career. He had decided to serve until retirement and was preparing to drop his packet to be part of a unit, "at the tip of the spearhead," an intelligence group he was so excited to work with. They were house hunting and had found a place they could not wait to call home. Her husband often spoke about future plans for them to travel and experience the world together. He said they were going to live the good life together and even talked about how much he could not wait to be grandfather, which was at least 20 years away.

g. Life was not always ideal for her husband. He faced many struggles in the past but was resilient. Even at the times he was human and made poor choices, he knew he

could work hard to atone for his misdeeds. He would always say that mistakes are part of being human and they are a wonderful opportunity for personal and professional growth. At the time of his death, he was going through personal struggles, and it was the first time she had seen him act out of character. He was going through a stressful custody battle, his younger brother was having problems he was trying to help with, excessive drinking was causing difficulties in their marriage, and he was going through something challenges at work.

3. The FSM enlisted in the Regular Army on 12 August 2008, and was awarded the Military Occupational Specialty (MOS) 35F (Intelligence Analyst).

4. The FSM deployed to Afghanistan from 26 July 2009 through 16 July 2010.

5. The applicant provided three of the FSM's NCOERs, covering the periods ending 18 July 2016, 18 July 2017, and 14 January 2018, all of which reflect he was rated "Exceeded Standard" or "Far Exceeded Standard" in all portions of Part IV (Performance Evaluation, Professionalism, Attributes, and Competencies) (Rater).

6. The FSM deployed to Iraq from 1 May 2018 through 16 September 2018.

7. A Marriage Certificate shows the FSM and the applicant married on [REDACTED]

8. DA Form 8003 shows on 4 June 2020, the FSM was command referred for substance use disorder evaluation. The reason for the referral was a drug/alcohol related incident of reported alcohol abuse by the spouse. The FSM had a record of a prior family advocacy program case in 2016. He had a prior divorce and was going through a second divorce. A handwritten note of the form shows the FSM had an SUD evaluation appointment on 8 June 2020, which was cancelled due to his reported COVID.

9. Two largely illegible DA Forms 4856 show the FSM was counseled on 4 June 2020 and an illegible date, for what appears to be alcohol abuse and spousal support.

10. 4th Battalion, 3rd Special Forces Group (Airborne) memorandum, 4 June 2020, issued the FSM a No Contact Order. It shows he was given a direct order to refrain from all physical, verbal, telephonic contact with the applicant until further notice. As an exception to the detailed limits of his contact with her, the FSM was allowed as an exception to contact her for the sole purpose of her enrollment in DEERS and for their divorce proceedings.

11. A largely illegible DD Form 2873 shows the FSM was issued a Military Protective Order, listing the applicant as the protected person.

12. DA Form 288 shows a FLAG was initiated against the FSM on 4 June 2020, for the purpose of a commander's investigation.

13. Two DA Forms 4187, 9 June 2020, reflect the following changes in the FSM's duty status:

- from Present for Duty (PDY) to Absent Without Leave (AWOL) effective 8 June 2020
- from AWOL to Dropped from the Roles (DFR) effective 9 June 2020

14. A DD Form 458 shows on 9 June 2020, the FSM was charged with being AWOL from his unit with intent to remain absent.

15. [REDACTED] Sheriff's Office Offense/Incident Report, 9 June 2020, has been provided in full to the Board for review, and in pertinent part shows:

a. On 9 June 2020, the incident reported on 9 June 2020, was the FSM's suicide. [REDACTED] Sheriff's Office had been informed of the FSM's presence in [REDACTED] and that he was reported AWOL from the U.S. Army Special Forces Division at Fort Bragg, NC, with an active warrant.

b. They were informed the FSM stated he was suicidal and if he were contacted by law enforcement, he would attempt suicide by police. He was reported to be possibly armed and dangerous as well as suicidal. He was believed to have two weapons in his possession.

c. His whereabouts [REDACTED] were known and he was being watched by the police department, when he headed West on [REDACTED], and the police would attempt a high risk stop. The FSM pulled over and the police department exited their vehicles with agency issued patrol rifles drawn and riot shields present to perform a high risk stop. It is further detailed that the FSM was found deceased, slumped over in his vehicle with a handgun on his person.

16. A third DA Form 4187, 9 June 2020, reflects the FSM's duty status change from DFR to Deceased effective 9 June 2020.

17. Final Autopsy Report, 10 June 2020, shows the following medical findings:

a. The FSM active member of the military was tracked [REDACTED] County and after an encounter with law enforcement, was found with a gunshot wound to the head.

b. His cause of death was contact exiting gunshot wound of the head.

c. His manner of death was suicide.

d. The toxicology report shows positive findings for:

- Ethanol
- Blood Alcohol Concentration
- Caffeine
- Delta-9 Carboxy THC
- Amphetamine

18. A Headquarters, 1st Special Forces Command (Airborne) memorandum, 11 June 2020, shows:

a. On 11 June 2020, the Commanding General, 1st Special Forces Command (Airborne) requested the FSM's duty status be corrected to reflect his return to military roles, that his DFR transaction be revoked, and that his case continue to be worked as a casualty case.

b. On or about 8 June 2020, the command determined the FSM was AWOL and between that date and his death, the chain of command were able to make sporadic phone contact with him. During those conversations he indicated he was suicidal and communicated his plan to imminently carry out his suicide plan.

c. The chain of command made multiple efforts via phone conversations to convince him to voluntarily return to military authorities to receive behavioral health treatment. Those efforts were unsuccessful, and the chain of command sought assistance from civilian law enforcement authorities [REDACTED] to safely apprehend him. Local law enforcement authorities [REDACTED] required the issuance of a valid warrant in order to apprehend the FSM. At that point, the unit chain of command, in coordination with the Fort Bragg Provost Marshall's Office and the U.S. Army Deserter Information Point (USADIP), submitted a request to initiate a one-day DFR in order to issue an emergency warrant, which allowed for the lawful arrest of the FSM for absenting himself without leave with an intent to remain away from his place of duty.

d. At approximately 1430, USADIP issued the emergency warrant, which provided local law enforcement authorities the legal authority to apprehend the FSM. Unfortunately, when local law enforcement authorities attempted to apprehend the FSM, he carried out his suicide pan.

e. In order for USADIP to execute the emergency warrant, the submission of the DA Form 4187 declaring his DFR was required. The completion of this duty status change was intended solely to execute a law enforcement warrant and was not intended to have the collateral effect of changing his duty status for other administrative

purposes. The action was submitted in an effort to save the FSM's life. An IO was appointed to determine his duty status, which will specifically address his mental state both at the inception of AWOL as well as the time of the incident and will lead to conclusive findings as to his correct duty status at the time of his death.

19. A second Headquarters, 1st Special Forces Command (Airborne) memorandum, 11 June 2020, shows an IO was appointed to conduct a formal LOD investigation pursuant to Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) and Army Regulation 15-6 (Procedures for Administrative Investigations and Boards of Officers) to investigate the facts and circumstances surrounding the death of the FSM on 9 June 2020.

20. A Death Certificate, issued on [REDACTED], shows the FSM died on 9 June 2020, on [REDACTED] in [REDACTED]. The manner of death is listed as suicide due to gunshot wound to the head, confirmed by autopsy.

21. A DA Form 4254 shows on 17 June 2020, the IO requested the FSM's private medical information for the purpose of the LOD investigation.

22. Toxicology Report, 26 June 2020, confirms positive findings for, the following, quantities of which are detailed in the report:

- Ethanol
- Blood Alcohol Concentration
- Caffeine
- Delta-9 Carboxy THC
- Amphetamine

23. A DD Form 1300 (Report of Casualty), 6 July 2020, provides the Final Report of Casualty and shows the FSM died on 9 June 2020 due to self-inflicted contact gunshot wound to the head, per Certificate of Death.

24. A DA Form 7747, 7 July 2020, provides the commander's report on the FSM's suspected suicide, and shows:

a. The FSM was geographically separated from his second wife due to reported domestic violence, excessive alcohol use, and pending divorce. They had a strained relationship due to her lack of enrollment in DEERS and lack of financial support on his DD Form 93 and Service Member's Group Life Insurance (SGLI).

b. The details of the suspected suicide event show the FSM departed Fort Bragg, NC on a suicide plan. The unit regained contact with him throughout his movement until his location was determined and the local police attempted to interdict and help him.

During the interdiction until the time of his death, local authorities presumed he took his own life at the initial interdiction attempt.

c. The FSM was expecting that intervention was probable and took active precautions to prevent others from his plans. He did tell someone what he was planning and/or asked for help. After his departure from the unit, he reported he had planned the event since 2014/2015 and made extensive, deliberate preparations for his suicide. In a phone conversation with a member of his unit on 8/9 June 2020, he stated he researched desired sites to commit the event.

d. Within 1 month of the event, he had alcohol misuse/abuse, financial issues including mortgage exceeding value of property and number of monthly obligations exceeding amount of monthly income, under disciplinary action for AWOL and substance abuse/domestic violence and may lose security clearance, pending divorce.

e. The comments show he stated willingness to voluntarily conduct screening and counseling with Behavioral Health and had a scheduled appointment for 11 June 2020. He was scheduled for his initial command directed SUD on 8 June 2020. He was dedicated to the execution of his planned suicide and began implementing steps to leave, utilizing COVID-19 to cover his initial movements on 5 June 2019, when he first reported potential cold symptoms.

26. Multiple highly redacted IO MFRs, all dated 22 July 2020, show the IO interviewed numerous individuals, to include the FSM's wife, the applicant, in conjunction with his investigation into the FSM's death and all MFRs have been provided in full to the Board for review.

a. The MFR detailing the interview with the applicant details how they met and married and his multiple instances of violence and drinking and how she got the Family Advocacy Program involved to get assistance. On 2 June 2020, she left the Fort Bragg area and planned to legally separate from the FSM. On 3 June 2020, she informed him she left town and what paperwork needed signing. They had collectively been under contract to purchase a home [REDACTED] with a closing date of 8 June 2020. The FSM had put down \$1,000.00 toward due diligence and \$1,000.00 toward earnest money for the closing.

b. Of particular note is the lengthy MFR recounting the sworn statement from a friend of the FSM, whom the FSM had called on the evening of 8 June 2020, expressing a plan to complete suicide. They spoke for 2 ½ hours on that Monday evening, of his intent to complete his plan of suicide that coming Saturday. The FSM shared the struggles and challenges he was facing and ultimately wanted to "assert control" over the situation and the best way was to go through with the suicide. He tried to steer the FSM toward hope and offer to meet him but was rebuffed and refused to state his



location. He was simultaneously sharing his assessment of the situation with the FSM's chain of command that it was beyond suicidal ideation, and he was clearly a threat to himself with a clear plan to complete suicide and was not deviating from his plan.

26. Five highly redacted and largely illegible DA Forms 2823 were provided, which presumably further detail sworn statements from individuals regarding the death of the FSM.

27. A DA Form 2173, 23 July 2020, shows the FSM was dead on arrival at Montrose Memorial Hospital on 9 June 2020, as the result of a gunshot wound. The medical opinion shows he was under the influence of alcohol and drugs at the time.

28. A Behavioral Health Officer Review for LOD MFR, 24 July 2020, shows:

a. On 9 June 2020, the FSM died from a self-inflicted gunshot wound to the head, while being AWOL. He was not mentally sound at the inception of AWOL and was not mentally sound during the events leading up to him ending his life. The probable cause of his suicide was related to multiple chronic stressors, history of alcohol abuse, and history of poor judgment. Based on the evidence provided, the behavioral health officer was unable to determine whether his mental condition was service-connected or existed prior to service.

b. As a basis for this opinion, the behavioral health officer reviewed the military medical record and the entirety of the evidence provided by the IO, to include, but not limited to, a case summary and sworn statements.

c. According to his military medical records, he had extensive involvement with the FAP since June 2015 and had also been enrolled in the Substance Use Disorder Care Clinic (SUDCC) in July 2015. He was being treated as the perpetrator of partner violence and for alcohol use disorder. Throughout his extensive treatment, he was diagnosed with adjustment disorder with anxiety and depressed mood, alcohol use disorder, anxiety, attention deficit disorder, insomnia, marital problems, other specified family circumstances, other problems related to primary support group, and partner relational problems.

d. The FSM was likely experiencing suicidal ideation with plan and intent in the days leading to his death. Collateral information suggests he had a number of identifiable stressors, to include relationship problems, potential financial/legal issues, and concerns related to his career, for which he was engaging in the unhealthy coping mechanisms of substance abuse.

e. Per Army Regulation 600-8-4, there is a presumption that a mentally sound person will not commit suicide (or make a bona fide attempt to commit suicide). This

presumption prevails until rebutted by a greater weight of the evidence that supports any different conclusion. No evidence in this case supports a different conclusion, given that the FSM's suicide was likely secondary to psychiatric symptoms and significant psychosocial stressors.

29. An IO MFR, 4 August 2020, provides a chronology of his investigation.

30. A DA Form 1574-1 4 August 2020, refers the reader to the Findings and Recommendations memorandum for the report of proceedings by the IO.

31. An incredibly detailed, 10-paged, IO Formal LOD Investigation memorandum, 4 August 2020, has been provided in full to the Board for review and in pertinent part shows:

a. The applicant's death was found in the LOD and not the result of misconduct or negligence as a behavioral health provider has determined he was mentally unsound at the time of his AWOL and at the time of his death. His medical records show he talked to psychologists and counselors in 2016 and there were questions of suicide at the time. In his final conversations, it appears he was certain that suicide was a legitimate course of action to deal with his current and future problems, which is indicative of his unsound mind.

b. Prior to his death, he was viewed as a very dependable NCO and had a stellar reputation as hard-working and competent. He was not being considered for disciplinary action as it relates to his duty performance, but there were two instances of adverse action prior to his death related to a claim of abuse against his wife.

c. On 4 June 2020, he was flagged and provided a formal written No Contact order and counseling, wherein he was required to enroll his wife in DEERS and contact FAP, SUDC and Behavioral health. On 5 June 2020, he was seen standing away from others in formation and stated he was not feeling well. It was assumed because of COVID-19, that any potentially sick Soldiers would go home and quarantine. In actuality, the FSM was not sick, but had rented a car from the airport and began driving west. On 6 June 2020, he claimed to have a 102 degree temperature and sent a photo of the thermometer, and the command was concerned he had COVID-19, but he was actually driving west. On 7 June 2020, the command became concerned about the potential COVID-19 case and the domestic abuse allegation happening at the same time and began closely monitoring the situation. After phone conversations on 8 June 2020, in which he stated he was going to an unspecified hospital, his command became suspicious, calling all hospitals in the area to determine his whereabouts. They were unable to locate him at his apartment or any local hospitals and began the process of changing his duty status from PDY to AWOL and eventually DFR to enable civilian law enforcement support in locating him. The events of the local law enforcement

intervention and phone conversations with a colleague, as previously discussed, are detailed in this MRF.

32. DD Form 261, 2 September 2020, provides the Report of investigation LOD and Misconduct Status. It shows the death of the FSM on 9 June 2020 by suicide, the result of a contact gunshot wound, was found in the LOD (although the findings portion of the available copy is redacted and difficult to read) and the findings were approved by the final approval authority on 2 September 2020.

33. A Headquarters, 1st Special Forces Command (Airborne) MFR, signed by the Commanding General, 3 September 2020, shows after careful consideration of the findings and recommendations memorandum pertaining to the death of the FSM, dated 4 August 2020, he thereby approved the findings.

34. A second, DA Form 2173, 8 September 2020, shows the FSM was dead on arrival at Montrose Memorial Hospital on 9 June 2020, as the result of a gunshot wound. The medical opinion shows he was under the influence of alcohol and drugs at the time. It also shows the FSM was PDY at the time of his death and the details of the accident retell the circumstances surrounding his death, as detailed above.

35. Headquarters, U.S. Army Medical Command, FOIA Office memorandum, 25 September 2020, shows the applicant requested information pertaining to the death of her husband and as a result, it was deemed appropriate to provide her with certain information in redacted form.

36. An AHRC, Casualty and Mortuary Affairs Operations Division letter, 15 March 2021, shows:

a. The Army's Casualty and Mortuary Affairs Operations Division extended their heartfelt condolences to the applicant for the loss of her husband. They regretted to inform her that, after careful review of the LOD Investigation, a final determination was made that his death was not in the LOD. Evidence contained in the investigation indicated he was aware of the nature and consequences of his actions prior to taking his own life.

b. She was advised that adverse findings in LOD cases may result in the loss of certain benefits, such as (but not limited to) survivor Benefits or Dependency and Indemnity Compensation from the VA. They recommended she seek legal assistance if she desires to contest the determination and not to hesitate to apply for VA benefits regardless of the Army LOD determination.

c. She was also advised of her right to appeal this LOD finding within 3 years of the LOD determination.

37. Headquarters, 1st Special Forces Command (Airborne), Office of the Judge Advocate General letter, 21 April 2021, extended the applicant condolences for the loss of her husband and provided her with a copy of the requested documentation regarding her husband's death, which was redacted due to FOIA considerations.

38. Headquarters, U.S. Army Special Operations Command, FOIA Office letter, 23 April 2021, likewise responded to the applicant's request for a copy of the Army Regulation 15-6 investigation into the death of her husband and provided her with redacted, releasable copy of the documents.

39. A VA letter, 7 February 2023, shows the applicant was in receipt of Dependency and Indemnity Compensation effective 1 December 2022, in the monthly amount of \$1,562.74 as the result of her husband's death on active duty as the result of a service-connected disability.

40. The applicant provided five letters of support/character statements, all of which have been provided in full to the Board for review, and in pertinent part show:

a. A memorandum from Colonel [REDACTED] shows he was providing his strongest statement of character for the FSM, who provided him with weekly intelligence updates. He was charismatic, upbeat, and an extremely competent NCO who could brief anyone. He was the consummate professional and charged with the most sensitive of tasks, performing them superbly. The termination of his life was out of character, and he was clearly not of sound mind or reasoning when he decided to take his own life.

b. A memorandum from Captain [REDACTED] shows he knew the FSM for 12 months from June 2019 – June 2020. He possessed an unlimited potential and was regarded as one of their strongest Intelligence NCOs. His dedication, humility, intelligence, integrity, and discipline were unmatched, and he far outpaced his peers. He was the epitome of what an officer wishes their NCO to be to their Soldiers and mission.

c. A memorandum from [REDACTED] shows he was a close and trusted coworker and friend of the FSM. The FSM was basically his right-hand man and could always be counted on, no matter the situation. For those who knew him, they can attest to the fact that he would not have left them if he were of sound mind. It is obvious that he fell victim to a tragic end that many military members face while of unsound mind.

d. A memorandum from Master Sergeant [REDACTED] shows he knew the FSM since March 2018 when they were classmates together at the Senior Leadership Course. They remained close after graduation, and he was a close and trusted peer of his from then on. The FSM consistently had the limelight and was a center of gravity. He lit up a room with his presence and constantly lifted those around him. To suggest this trusted and intelligent leader could make the miscalculated decision he made while of

sound mind is incredulous. It is appalling and embarrassing that a group of individuals who did not know the FSM nor were present in his final hour would have the audacity to suggest he was of sound mind, considering his action could only be committed by an unsound mind, given his character.

e. A letter from a Licensed Clinical Social Worker, [REDACTED] shows the applicant was a client of hers from May 2019 through September 2021, and the FSM attended a few sessions with her to address their relationship concerns, attending 5 in person sessions and two telehealth sessions during the COVID-19 shutdown. COVID-19 made marriage counseling more difficult and harder to focus on treatment on the marriage. The applicant reported increased arguments during this time and reported an argument that became physical, resulting in her staying with a friend and contacting FAP at Fort Bragg. She was afraid for both her safety and the safety of her husband. It was shortly after this that she reported he had died by suicide.

41. Headquarters, U.S. Army Special Operations Command MFR, 19 April 2024, requested an expedited review of this application.

42. The applicant provided 507 pages of her husband's service medical records as well as 100 pages of additional behavioral health medical records, all of which have been provided in full to the Board for review. They reflect the FSM's diagnosis and treatment for multiple conditions, to include:

- dorsalgia (dorsal pain in the spine)
- problems in relationship with spouse or partner
- other specified problems related to primary support group
- alcohol use, unspecified with unspecified alcohol-induced disorder
- alcohol disorders
- adjustment disorder with anxiety and depressed mood
- joint derangement shoulder region
- partner relational problem
- anxiety

43. In the adjudication of this case, an advisory opinion was provided by the AHRC, Casualty and Mortuary Affairs Operations Division on 7 June 2024, which shows:

a. The FSM died as the result of a self-inflicted gunshot wound to the head; the manner of death was suicide. According to the investigation, he had recently been accused of domestic violence and excessive drinking by his spouse, which resulted in her reporting to Family Advocacy. As a result, the FSM was brought before his command and given a no-contact order and subsequently flagged.

b. The following day, he was seen isolating himself away from formation; however, when approached he informed the Commander he was not feeling well. As a result, the FSM was sent home to self-quarantine. When in actuality, the FSM had rented a car from the airport and began driving west after leaving his personal vehicle at the airport, unlocked and keys inside. The following day, he claimed to have a 102-degree temperature and went as far as to send the Commander photos of such, as well as tell him that his neighbor was taking him to the hospital. Unbeknownst to his chain of command, the entire time FSM had been traveling and was in Illinois. The command became suspicious, went to his residence, and spoke with the neighbor who in turn told them she had not seen him in a few days.

c. The command immediately went to local authorities and requested they ping his cell phone location; however, the request was denied due to the FSM not being identified as an imminent risk to himself. As a result, the command was able to contact him, and he informed them he previously planned for this five years ago; he was going to Colorado, and then he would go on a hike where he ultimately intended to take his own life. Subsequently, the command reported the FSM as AWOL and reported him as a deserter in order to allow law enforcement to ping his phone, make contact and apprehend him.

d. At the time the FSM was located, he had made his way to Colorado and upon authorities attempting to initiate a traffic stop, he took out a weapon, placed it to his head and pulled the trigger. The FSM was pronounced deceased a brief time later. According to the postmortem behavioral health assessment, it was opined that at the time he went AWOL he was not of sound mind, as well as not mentally sound at the time he took his own life.

e. The events leading up to the FSM's demise clearly shows the Soldier knew exactly what he was doing and knew the actions he was taking. His toxicology also revealed a Blood Alcohol Content of 15 mg/dL, 16 ng/dL for THC and 55 ng/dL for amphetamine at the time of his death. Based on the evidence submitted and in accordance with Army Regulation 600- 8-4, the Soldier's determination of Not in Line of Duty-Due to Own Misconduct is correct.

44. On 27 June 2023, the applicant was provided a copy of the ARHC advisory opinion and given an opportunity to submit comments. She responded, stating:

a. As part of the medical records submitted in this case, the Board should see that in 2015 her husband underwent treatment from the Army for an alcohol disorder. In the years she was with him, prior to his death, she had no concerns about his alcohol consumption; with the exception of a brief struggle with alcohol after returning home from a deployment. However, in the weeks leading up to his death, which also coincided with the COVID lockdowns, she observed an increase in his alcohol consumption and

violent behaviors, which were out of character. In an attempt to provide help, she invited him to attend counseling with her through telehealth. This is documented in the character letter submitted by [REDACTED]. During counseling, he shared some trauma from his past and it was recommended that he seek individual treatment. He refused, stating a fear of his command finding out that he was seeking help, and it would affect his career with the Army, making him not eligible to deploy. The alarming behavior in their home continued. Feeling like she was out of options to help her husband, it was recommended that she contact the FAP. It was the FAP that reached out to his command and who then contacted her. By this point, she had already left the area, driving to Fort Polk where her sister was stationed. She felt it was best to create a little distance in hopes of de-escalating the situation. However, she was still extremely concerned for the well-being of her husband, so she agreed to speak with the command. She expressed that there was something very wrong with her husband and that she did not fully understand his drastic change in behavior. She spoke to the command because she trusted they would have her husband's best interests at heart and provide him with the help that she could not. Everything that followed was under their guidance on how to handle this crisis situation.

b. In the days leading up to this death, her husband did multiple things that were out of character. His rental of a vehicle from the airport was unnecessary. He owned his own car, which was in working order, so there was no need to rent a vehicle. The airport is a 30 minute drive from their home, there are much closer car rental facilities. His choice to rent a car from an out of the way location is evidence of an unclear head space. The locations where he traveled also support the claim that he was not in his right mind. While in Illinois, he did not visit his brothers but instead went to the home of his in-laws from his previous marriage. This is not something he would have done without his two children being present, he never visited his former in-laws alone. After his death, they expressed that his surprise visit was strange and that he did not act like himself. After leaving Illinois, he traveled two thousand miles [REDACTED], a place he had never been and had no personal connection to. Driving such a long distance was out of character for him, he hated road trips and preferred to fly.

c. Her husband's command was concerned for his well-being and once they spoke with him, he was open about his plans to take his life. This was not new information for the Army. In the medical records submitted with the appeal, the Board will see that in 2015 during a medical intake, he expressed thoughts of suicide. He was identified as having depression and anxiety, also documented as part of his medical records, but received no treatment. This is not him being aware of his actions, but evidence that he was struggling with his mental health for many years.

d. In the days preceding his death, there were multiple attempts to convince her husband to seek help instead of ending his life. It was only after these attempts were

determined ineffective that the Army issued an AWOL to help locate him in order to get him medical assistance. The AHRC's timeline of events is incorrect.

e. The results on the toxicology report demonstrates he was not in his right mind and behaving in a way that does not match his character. He never did drugs. Upon review of his military records you will see, he passed every urinalysis randomly given to him by the Army during his twelve years of service. At the time of his death, he was in excellent standing with his Army unit. In character letter Officer in Charge (OIC), [REDACTED] provides evidence of his exceptional work within 3rd group. This is also supported by three NCOERs from the years leading up to his death. Also, as evidence in a character letter submitted by his Battalion Commander, COL [REDACTED] who states that his termination of his life was out of character, which signals to him that he was out of his mind at the time of his death.

f. Per Army Regulation 600-8-2, a behavioral health assessment was conducted by experts in the field of behavioral and mental health. Their findings are included with this appeal packet. Based on a review of the case, the clinical psychologist determined "(Her husband) was not mentally sound at the inception of AWOL and was not mentally sound during the events leading up to him ending his life." Also included with this appeal are the findings from her husband's unit investigation results. On page 8 of this report, the unit determined his death was not a result of misconduct or negligence. The emphasis is added to their findings that he was found not mentally sound at the time of his death and support that the "incident will be handled as ILD." The VA has also reviewed this case. A document has been included that shows the VA determined his service honorable and his death was a result of a service-connected disability. This also supports the behavioral health assessment and the unit's findings that his death was In the LOD.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the evidence available reflecting the applicant had misconduct which may have contributed to the stress leading to his suicide, as well as the findings outlined in the HRC advisory opinion, the Board concluded there was insufficient evidence of an error or injustice warranting the reversal of the findings in previously issued line of duty investigation.



BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

3/31/2025

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. 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. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NRs) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide BCM/NRs in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

3. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of injury, illness, disease, or death of a Soldier. It provides standards and considerations used in making line of duty (LOD) determinations.

a. Paragraph 2-1 states 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.

b. Paragraph 2-4 (Standards applicable to line of duty (ILD) determinations).

(1) A Soldier's injury, illness, disease, or death is presumed to have occurred ILD unless rebutted by the evidence.

(a) Injury, illness, disease, or death proximately caused by the Soldier's misconduct or gross negligence is "not in line of duty-due to own misconduct (NLD-DOM)."

(b) Simple negligence, alone, does not constitute misconduct and is, therefore, still considered to be ILD.

(2) Standard of proof. Unless another regulation or directive, or an instruction of the appointing authority, establishes a different standard, the findings of investigations governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion (such as, by a preponderance of the evidence). The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating factors, which as a whole show that the fact sought to be proved is more probable than not.

(a) Consider all the evidence. All direct evidence, that is, evidence based on actual knowledge or observation of witnesses; All indirect evidence, that is, facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind; No distinction will be made between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than direct evidence (for example, statement of a witness).

(b) Evaluate factors such as a witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and relationship to the matter to be decided.

(3) The rules in appendix D and the terms in section II of the glossary will be considered when making an LOD finding. The rules elaborate upon, but do not modify, the standards for making LOD determinations.

c. Paragraph 2-5 (LOD determination(s)). One of the following eight determinations will be applied the Soldier's injury, illness, disease, or death. On the DA Form 2173 (Statement of Medical Examination and Duty Status) or DD Form 261; if the finding is not listed on the current form, annotate the finding in block 30 of the DA Form 2173 and block 10(g) on the DD Form 261. Any NLD (not in line of duty) finding of an LOD investigation must be forwarded to Commander, AHRC.

(1) In Line of Duty. The injury, illness, disease, or death did not occur while the Soldier was AWOL and was not due to the Soldier's own misconduct or gross negligence. For USAR/ARNG Soldiers, the injury, illness, disease, or death occurred while the Soldier was in a duty status or direct travel status. This finding also applies in

suicide cases when Soldiers are AWOL and considered mentally unsound at both the inception of AWOL and at time of death (mental soundness can only be determined by a behavioral Health expert).

(2) Not in line of duty-due to own misconduct (NLD–DOM). A formal investigation determined that the Soldier's injury, illness, disease, or death was proximately caused by the Soldier's own misconduct or gross negligence. Only a behavioral Health expert can only determine mental soundness.

d. Paragraph 3-11 (Evidence collection). The IO will ascertain dates, places, persons, and events definitively and accurately. It is essential to provide the approving, reviewing, and approval authority with an accurate understanding or "word picture" of the incident. The IO must ensure that the investigation contains all available and pertinent evidence to support their finding.

(1) The following is a non-exclusive list of evidence that should be included (as applicable) in formal reports of investigation conducted under the provisions of this regulation. Law Enforcement reports; Pertinent medical records; Autopsy and/or toxicology reports; Death certificates; Sworn witness statements; Mental Health assessments; State of intoxication and extent of impairment of faculties; Miscellaneous - incident site maps, charts, diagrams, etc.

(2) Death Certificates. Particular attention should be given to the "manner of death." "Accident" as manner of death does not imply, nor should be interpreted as an absence of misconduct or gross negligence. If the IO questions the manner of death, military, and/or civilian authorities should be consulted for final resolution.

(3) Mental Health assessments. In cases of suicide or attempted suicide, the responsible MTF (nearest place of incident) behavioral health officer will review the evidence collected by the IO and render an opinion as to the Soldier's mental soundness at the time of the incident. The IO is not bound by the behavioral health opinion. When investigating a suicide or attempted suicide, the IO must consider the provisions of paragraph 4–12 of this regulation and collect relevant evidence accordingly.

(4) State of intoxication and extent of impairment of faculties. Evidence regarding the state of intoxication and the extent of impairment of the physical or mental faculties of any person involved and connected with the incident, when relevant. Evidence as to the general appearance and behavior, clear and rational speech, coordination of muscular effort, and all other facts, observations, and opinions of others bearing on the question of actual impairment will be made to determine the quantity and nature of the intoxication agent used and the period of time over which used by the

person. Results of any blood, breathe, urine, or tissue tests for the intoxicating agent should also be obtained and submitted (actual lab results if possible).

e. Paragraph 4-10 (Intoxication and drug abuse), provides, a Soldier who voluntarily becomes intoxicated is held to the same standards of conduct as one who is sober. While merely drinking alcohol is not misconduct, intoxication does not excuse misconduct. If an injury is incurred as the proximate cause of voluntary intoxication, it is incurred as the result of misconduct. For intoxication alone to be the basis for determining misconduct with respect to a related injury there must be a clear showing that the Soldier's physical or mental faculties were impaired due to intoxication at the time of the injury, that the impairment was voluntary, and that the impairment was the proximate cause of the injury.

f. Paragraph 4-11 (General rule regarding mental responsibility), provides a Soldier may not be held responsible for their acts and their foreseeable consequences if, at the time of commission of such acts, as the result of mental defect, disease, or derangement, the Soldier was unable to comprehend the nature of such acts or to control his or her actions. That is, if the Soldier does not have the ability to form the intent to undertake the underlying conduct, then the Soldier is mentally unsound, and therefore not mentally responsible, for the purposes of LOD investigations.

g. Paragraph 4-12 (Suicide or attempted suicide).

(1) 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.

(2) Due to the strong human instinct for self-preservation, suicide and bona fide suicide attempts create a rebuttable presumption that a Soldier who committed or attempted suicide lacked mental responsibility and was unable to comprehend the nature of or to control their actions. The presumption can be rebutted by a preponderance of the evidence establishing a reasonably adequate motive for suicide. A reasonably adequate motive for suicide exists when evidence establishes circumstances which could lead a rational person to self-destruction. A failure to rebut the presumption shall support a finding of ILD.

(3) In the event of a suicide or attempted suicide, the MTF 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 defect, disease, or derangement. 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." This rule does not apply if the mental defect, disease, or derangement existed prior to service and was not aggravated by military service.

(4) When conducting a line of duty investigations 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 at-tempt, 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). 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.

(5) If the Soldier is found mentally unsound, the behavioral health officer should determine whether the Soldier's mental condition was an EPTS (existed prior to service) condition aggravated by military service or was due to the Soldier's own misconduct. Those conditions occurring during the first 6 months of active duty may be considered as EPTS, depending on history.

(6) In cases of suicide or attempted suicide during AWOL, mental soundness at the inception of the absence must be determined.

(7) An injury or disease intentionally self-inflicted or an ill effect that results from the attempt(s). 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.

h. Appendix D (Rules Governing Line of Duty and Misconduct Determinations). Soldiers training and professional values must be considered in all LOD determinations. In every formal investigation, the purpose is to find out whether there is evidence of misconduct or gross negligence and if so, whether the preponderance of the evidence

rebutts the presumption of ILD. To arrive at such decisions, the following rules will be applied and considered when making LOD findings or determinations.

(1) Rule 1 - Injury, illness, disease, or death directly caused by the individual's misconduct or gross negligence is NLD.

(2) Rule 2 - Violation of military regulation, orders, or instructions, or of civil laws, if there is no further sign of misconduct, may be no more than simple negligence. Simple negligence is not misconduct. Therefore, a violation as described under this rule alone may not be enough to determine that the injury, illness, disease, or death resulted from misconduct. However, the violation is one circumstance to be examined and weighed with all the other circumstances. Depending on the facts of a particular case, a combination of multiple (two or more) violations may be considered gross negligence.

(3) Rule 3 - Incapacitation because of the abuse of alcohol or other drugs that results in injury, illness, disease, or death is due to misconduct and is NLD. 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.

(4) Rule 7 - A Soldier who operates a motor vehicle in a negligent manner that was the proximate cause of an injury, illness, disease, or death may be found to have engaged in misconduct depending on the circumstances as a whole. Simple negligence alone does not constitute misconduct. A Soldier who knew or should have reasonably known they were unfit to drive, and who is injured or deceased as a result of driving a motor vehicle when unfit to do so, may be found to have engaged in misconduct. Voluntary intoxication, use of drugs or other circumstances that affect the Soldier's mental or physical faculties may cause a Soldier to be unfit.

(5) Rule 9.

(a) For purposes of making LOD findings, there is a presumption that a mentally sound person will not commit suicide (or make a bona fide attempt to commit suicide). This presumption prevails until rebutted by a greater weight of the evidence than supports any different conclusion (see para 4-12b).

(b) 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. If the Soldier is found mentally unsound, the behavioral health officer should determine whether the Soldier's mental condition was service connected, EPTS or EPTS-SA. 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.

(c) The MTF must identify, evaluate, and document mental and emotional disorders. A Soldier may not be held responsible for their acts if, as the result of mental defect, disease, or derangement, the Soldier was unable to comprehend the nature of such acts or to control their actions. Therefore, these disorders are considered "ILD" unless they existed before entering the Service and were not aggravated by military service. Personality disorders by their nature are considered as EPTS.

//NOTHING FOLLOWS//