IN THE CASE OF: [redacted]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240005492

APPLICANT REQUESTS: through Counsel:

- correction of the line of duty (LOD) determination for their son, a deceased former service member (SM), to reflect in the LOD in lieu of not in the LOD – due to own misconduct
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Counsel's brief
- enclosure list
- Honorable Discharge Certificate, 5 December 2016
- DA Form 638 (Recommendation for Award), 12 July 2018
- Army Commendation Medal Certificate, 1 November 2018
- DD Form 1610 (Request and Authorization for Temporary Duty (TDY) Travel of Department of Defense (DOD) Personnel), 25 July 2019
- A Company, 309th Military Intelligence Battalion memorandum, 31 October 2019
- Enlisted Record Brief (ERB) 9 January 2020
- Consult Report, 27 July 2020
- Medical Record, 9 December 2020
- Medical Record, 19 April 2021
- Medical Record, 2 June 2021
- Medical Record, 19 October 2021
- Medical Record, 20 October 2021 – 22 December 2021
- Medical Record, 8 December 2021
- Medical Record, 22 December 2021
- Medical Record, 12 January 2022
- SM's undated statement to Board of Officers/Administrative Separation Board, presumably from on or about February 2022
- DA Form 1574-2 (Report of Proceedings by Board of Officers), 16 February 2022
- LOD Report Request, 21 March 2022

- partial Criminal Investigation Division (CID) Form 94 (Agent's Investigation Report), 24 March 2022
- Death Certificate, [redacted]
- DD Form 1300 (Report of Casualty), 22 June 2022
- DD Form 261 (Report of Investigation – LOD and Misconduct Status), 4 August 2022
- LOD Investigating Officer memorandum, 4 August 2022
- DA Form 2173 (Statement of Medical Examination and Duty Status), 22 August 2022
- U.S. Army Human Resources Command (AHRC), Casualty and Mortuary Affairs letter, 30 September 2022
- Mother's letter to AHRC, Casualty and Mortuary Affairs, 2 March 2023
- Office of The Adjutant General letter, 27 March 2023
- AHRC, LOD Appeals email, 5 July 2023
- AHRC, Freedom of Information Act (FOIA) Office letter, 29 September 2023
- AHRC, FOIA Office email, 26 October 2023
- photograph of parents
- letter of support from [redacted] undated
- letter of support from [redacted] undated
- letter of support from [redacted] 15 December 2023

FACTS:

1. Counsel states:

a. The applicants appeal the LOD determination by the approval authority and upheld by the AHRC, finding that their son's death was not in the LOD, due to his own misconduct. They request that the death of their son, the SM, be determined to have been in the LOD, as his death was by suicide. This appeal is based on new evidence not considered by either the approval authority or AHRC, namely, the well-documented medical history of the SM, which was available, but not fairly considered by the Army in reaching its conclusion. Failure to consider all available relevant evidence constituted error and a grave injustice to the family of the SM, who seek to have their son's death characterized as in the LOD.

b. The SM was the subject of an administrative separation board on 16 February 2022. The board decided to separate him with an other than honorable conditions discharge. On 23 February 2022, 7 days after the separation board, he was found deceased at his residence. His cause of death was determined to be a drug overdose. An LOD investigation concluded his death was not in the LOD - due to his own misconduct. That decision was confirmed by The Adjutant General, Brigadier General (BG) [redacted] Counsel's office, Soldier Legal Services, Office of the Staff Judge Advocate, Joint Base San Antonio, was contacted by applicants, who requested

assistance with appealing the determination that the death of their son, the SM, was not in the LOD - due to his own misconduct. After reviewing his medical records and life circumstances, they believe the SM, in a state of helpless despair, did not simply die of a drug overdose, but rather committed suicide.

c. The SM died on 23 February 2022 (Enclosure 1 - report of casualty and death certificate), 7 days after an administrative separation board had decided he should be separated with an under other than honorable conditions discharge (Enclosure 2). His parents received notice of the LOD determination on 30 September 2022 (Enclosure 3), which found that their son's death was not in the LOD - due to his own misconduct. Without the benefit of legal counsel or the ability to review the evidence relied upon by the Government in making the LOD determination, on 2 March 2023, the applicants requested that the LOD determination be overturned. They also requested assistance with their appeal (Enclosure 4), as without a copy of the LOD investigation report, they were in no position to make a substantive appeal.

d. On 27 March 2023, BG [redacted] in his role as The Adjutant General for AHRC, denied their request to overturn the LOD determination (Enclosure 5). BG [redacted] 27 March 2023 letter acknowledged that the applicants had exhausted all other administrative remedies and could, therefore, appeal the LOD determination to this honorable Board. Such an appeal was actually recommended by the AHRC point of contact for LOD appeals, Mr. [redacted] (Enclosure 6).

e. Please note that, in making his decision on the LOD determination, BG [redacted] referenced an AHRC request for a behavioral health opinion sought in response to the applicants' concern about their son's behavioral health issues, given his 12 years of military service. BG [redacted] provided no information regarding the behavioral health opinion apparently provided to him, but he did reference a 26 May 2020 behavioral health intake evaluation which was conducted when the SM self-referred to behavioral health through the Army's Substance Use Disorder Clinical Care (SUDCC) program. As summarized by BG [redacted] the initial assessment from that intake evaluation, which was completed almost two years before Cameron's death, found that the SM demonstrated "mild depression, little to no post-traumatic stress disorder (PTSD) symptoms, moderate anxiety, severe alcohol use/abuse, mild-moderate insomnia with no [suicidal ideations/ homicidal ideations]." BG [redacted] then summarized the SM's actions for the approximately 20 months that followed the behavioral health evaluation, noting that he had 3 failed drug tests and was arrested for driving under the influence (DUI), as well as experiencing a drug overdose on 22 February 2022, that required paramedics to administer two doses of NARCAN (naloxone). Within hours of the NARCAN treatment, the SM was dead from a lethal overdose that included opioids (fentanyl and morphine), despite no history of opioid use prior to that week.

f. The applicants requested a copy of the LOD investigation report on 21 March 2022 (Enclosure 7) but did not receive anything other than the 30 September 2022 notice of the LOD finding (Enclosure 3). Neither the investigation report nor any of the exhibits to the report were provided to them. With assistance from Counsel's office, the applicant filed a FOIA request online in September 2023. Apparently, the response to her request was mailed to the Casualty Assistance Center at Fort Sam Houston and there was an issue with it being delivered to the applicants' home, so Counsel's office coordinated with the FOIA chief at AHRC, who assisted them to get a redacted copy of the LOD findings in late November 2023 (Enclosure 8). While applicants were extremely grateful to finally see a copy of the report, they were distressed that none of the exhibits to the report were included, and that the report did not consider their son's medical history or the possibility – given what had happened in their son's life during the year prior to his death - that he had actually committed suicide. The fact that the SM's medical record was not referenced in the original LOD findings has caused the applicants to believe that AHRC was deprived of critical information relevant to the case and had, therefore, decided the appeal without all the facts. For example, the 4 August 2022 LOD findings (Enclosure 8) make no reference to the SM's medical history or to what had transpired in his life other than for the 72-hour period prior to his death. The SM's medical history and life circumstances should have been a part of the LOD investigation, particularly considering it was determined that he took what likely had been a lethal overdose of opioids late on the evening of 22 February 2022, which required two doses of NARCAN as treatment. The LOD findings relate that the SM refused further medical treatment once the NARCAN had taken effect. By early morning of the following day, after being left by himself, he was found deceased, with the cause of death determined to be the toxic effects of multiple drugs, including fentanyl and morphine.

g. Counsel's office has reviewed the SM's medical record (1566 pages), a complete copy of which is available upon request. We have also contacted fellow Soldiers and a friend who were in contact with him just prior to his death. Based on information in his medical records as discussed below and in the materials enclosed with this memorandum, his actions should have at least raised the question whether this was a simple overdose - as concluded by the Government - or whether it was a deliberate effort by the SM to take his life. We believe that, in a state of extreme despair and believing he had no future, thus depriving him of mental responsibility and the ability to comprehend the nature of or to control his actions (see Army Regulation 600-8-4 (LOD Policy, Procedures, and Investigations) paragraph 4-12), the SM chose to take his life by overdosing on
opioids.

h. The SM entered active duty as an 11 B (Infantry) on 24 August 2010. He served in units at Joint Base Lewis McChord (JBLM)/Fort Lewis and then Fort Carson without incident. He rose to the rank of staff sergeant (SSG) and successfully completed sniper

training in 2015. He completed two combat deployments to Afghanistan and received numerous awards, including an Army Commendation Medal with a C device (Enclosure 9). While his service was exemplary and without incident, his deployments and the life of an infantry sniper Soldier did take its toll on him personally.

i. The SM returned from his second deployment at the end of 2018 to find that the love of his life - the woman with whom he had shared a life for 8 years - had moved out of their home 2 weeks prior to his return. She had left without explanation and had taken all the furniture with her. He came back to an empty home and with no one to talk about his experience as a sniper for the 8 prior months in Afghanistan. He was devastated but decided to try and make the best of the situation (see Enclosure 10 - statement prepared by the SM for the separation board).

j. The Army supported his decision to change branches to Military Intelligence (MI). In August 2019, he went to an MI course at Fort Huachuca (Enclosure 11), but unfortunately was unable to complete the training (Enclosure 12). In December 2019, the Army assigned him to be a sniper instructor at Fort Benning (now Fort Moore) (Enclosure 13 - ERB), but he struggled to enter that tight-knit community. And then COVID hit, which meant shelter-in-place orders, travel bans, and difficulty receiving in person services at health facilities for his increasing medical and behavioral health issues. The services he did receive - as with many Soldiers - included mountains of prescription drugs. And like many Soldiers, he started to find his own way to cope by drinking alcohol.

k. The SM's drinking and depression reached a climax the weekend of Father's Day 2020. He called [redacted] a friend from high school, and disclosed that he had a gun and planned to take a bunch of drugs and then kill himself. Mr. [redacted] then called the SM's, who called their son and begged him to get help (Enclosure 14 - letter from [redacted] On 27 July 2020, the SM did seek help from behavioral health (Enclosure 15, medical records pages 1471-1485), where he was treated for alcohol dependence and anxiety. He was prescribed Naltrexone for the alcohol abuse, dextroamphetamine for ADHD, and Celecoxib for pain. At that time, his risk level for suicide was determined to be low. Eventually he received inpatient treatment in the fall of 2020 for his alcohol problems - during that treatment he was diagnosed with depression, anxiety, and PTSD. Unfortunately, despite the behavioral health treatment, on 5 December 2020 he was cited for DUI. On 9 December 2020, he sought assistance from behavioral health in order to address his alcohol abuse - the treatment included. An assessment using the Columbia Suicide Severity Rating Scale (C-SSRS), which again found his risk level to be low (Enclosure 16, excerpt from medical records, pages 744, 747). In 2021, he tested positive for cocaine on multiple occasions and received nonjudicial punishment, resulting in repeated loss of rank. He was treated for cocaine dependence on 20 October 2021, 29 October 2021, and 22 December 2021 (Enclosure 17, excerpts from medical records pages 273, 265-268, 234).

I. In late 2020, the SM began to repeatedly seek medical treatment at military medical facilities. A copy of his complete military medical record is available upon request, but for purposes of this appeal, we summarize relevant treatment he received and reference the associated dates of treatment in his medical records. His treatment included:

(1) A rise in his prostate-specific antigen (PSA), indicating problems with his prostate (December 2020 thru March 2021).

(2) Alcohol dependence (6 January 2021, 20 January 2021, 27 January 2021, 3 February 2021, 9 February 2021, 11 February 2021, 17 February 2021, 24 February 2021, 10 March 2021, 17 March 2021, 24 March 2021, 21 April 2021, 5 May 2021, 18 May 2021, 19 May 2021, 2 June 2021, 9 June 2021, 16 June 2021, 23 June 2021, 30 June 2021, 11 August 2021, 18 August 2021, 1 September 2021, 22 September 2021, 6 October 2021, 8 December 2021, 5 January 2022, 12 January 2022, and 19 January 2022). These appointments were a combination of face-to-face, telephonic, and group therapy sessions.

(3) Hypersomnolence and fatigue (12 March 2021).

(4) Dermatology (skin lesion) (17 March 2021).

(5) Orthopedics (left wrist pain) (18 March 2021). During the appointment it was noted that he was suffering from depression and anxiety.

(6) Weight loss and nutrition (6 April 2021)

(7) During a virtual Personal Health Assessment on 19 April 2021, a number of health and pain issues were revealed. He was again assessed using questions from the C-SSRS, where it was disclosed that he had at some point taken steps to end his life. His suicide risk level was raised to intermediate (Enclosure 18, excerpt from medical records pages 485, 488).

(8) Sleep apnea (23 April 2021)

(9) Alcohol use, unspecified with unspecified alcohol-induced disorder (2 June 2021). This appointment was part of a multi-disciplinary behavioral health assessment that was initiated by Cameron because, in his words, "I have had a lot of setbacks." The Army Psychiatric Nurse Practitioner summarized his health history regarding what brought him to the hospital that day as follows: "Patient with documented history of BH diagnosis, depression, anxiety, substance use disorder, ADHD and insomnia. Patient is provider referred for medication management, psychiatric evaluation. Patient describes their mood as fair. Patient reports that since COVID-19 pandemic his depression has

increased due to the social isolation. Also, patient was charged with DUI in 2020, as well as positive for cocaine during drug screen approximately 2-3 months ago per patient. Due to his past behaviors, patient was demoted to Specialist (SPC), received extra duties at work, and is currently under Chapter. Also, patient is in the process of MEB but is unsure whether the Chapter will override the MEB, which is causing him some anxiety. Patient reports· depression symptoms and insomnia occur a few times per week. Patient reports that symptoms impact their ability to take care of home, remain productive at work and/or around the home. Patient's self-esteem appears fair with reported feelings of excessive guilt and shame. They report the following symptoms: depressed mood nearly every day, anhedonia, significant weight gain, sleep disturbances, poor energy, lack of motivation, poor concentration, poor libido, feeling on edge, avoidance of social situations. They deny symptoms associated with mania/hypomania, excessive fears, excessive worry, panic attacks, auditory hallucinations, visual hallucinations, obsessions and compulsions, symptoms associated with an eating disorder, do not present delusional. Patient currently denies suicidal ideation, self-harm behaviors, homicidal ideation, violent behaviors, inappropriate or illegal behaviors." (Enclosure 19, excerpt from medical records pages 415-416). In the provider notes, specific reference is made to the additional stressor related to the SM's loss of income due to the non-judicial punishment he had received, and that "he is barely able to afford current apartment."

(10) Gastrointestinal problems (22 June 2021).

(11) ADHD (17 August 2021).

(12) Cocaine dependence (20 October 2021, 29 October 2021, and 22 December 2021).

(13) Chronic PTSD (9 December 2021).

(14) Major depressive disorder, recurrent severe without psychotic features - it was determined at this appointment that he was not fit for duty (12 January 2022) (Enclosure 20, excerpt from medical records pages 211, 216).

m. The SM was treated for his alcohol problems via inpatient therapy more than once, the most recent treatment taking place for four weeks at Journey Pure, a civilian network of clinics that treat substance abuse and mental health conditions, beginning in November 2021. Upon discharge from that program, he was assessed on 8 December 2021 by Army behavioral health providers, who determined he was "High Acute Risk for Suicide" (Enclosure 21, excerpts from medical records pages 256-261), commenting "After considering variables that influence suicide risk including prior suicide attempts, psychiatric diagnoses that elevate risk, age, gender, family background, interpersonal relationships, physical health, suicide risk variables regarding lethality/access/planning,

affective control, degree of hope; family history of completed suicide, degree of willingness to seek help, being future oriented, connection with therapist, and degree of psychosocial support for dealing with current life stressors, recent return from residential treatment at [redacted], current suicide risk is judged to be [X] High risk." In a separated appointment on 22 December 2021 for cocaine dependence, which was with a different provider, specific reference is made to the behavioral health assessment conducted on 8 December 2021 where his suicide risk level was raised to "high", his provider determined Cameron was "High Acute Risk for Suicide, and his C-SSRS was changed to amber (Enclosure 22, excerpt from medical records pages 234-240). While the medical documentation indicates command was notified and granted permission to discuss the SM's personal health information (Enclosure 21, page 261), there is no reference to any actions actually taken by the command to address the situation. In addition, there is no reference to his suicide risk in the LOD report.

n. The SM was prescribed drugs for his medical issues - lots of drugs. As of 12 January 2022, his active prescription list included the following:

- Buspirone
- Quetiapine Fumarate
- Prazosin
- Hydroxyzine Pamoate
- Olanzapine
- Sertraline
- Amlodipine
- Ondansetron
- Trazodone
- Benzonatate
- Diazepam
- Mylan
- Folic Acid
- Hydrochlorothiazide
- Baclofen
- Lidocaine
- Ketorolac Tromethamine
- Gabapentin
- Adderall
- Clonidine
- Seroquel
- Celecoxib

o. The majority of these drugs were prescribed within the last 2 years of his life. Even his medical providers started to take note that there was an issue with the number

of drugs he was being prescribed, which resulted in an appointment for "therapeutic drug level monitoring." (Enclosure 23, excerpt from medical records page 278). When his parents went to his home after his death, they were shocked at the number of drugs he was simultaneously taking. They allowed us to take a photo of them with the prescription bottles - see Enclosure 24.

p. Notwithstanding his multiple medical and behavioral health problems, the unit saw fit to initiate the SM's separation from the Army for misconduct. Because he had more than 6 years of service, he was entitled to a separation board, which was held on Wednesday, 16 February 2022. The board elected to separate him with an under other than honorable conditions discharge (Enclosure 3).

q. The timing of the board is significant. It was held the week before the President's Day weekend, which meant the SM was alone for a significant period of time after the separation board. Despite a medical record that found he was at high-risk for suicide and a separation board that was ending his 12-year career with an under other than honorable conditions discharge, his unit chose to leave him by himself after the separation board.

r. His supervisor, Sergeant First Class (SFC) [redacted] was worried about him and called him several times, fearing that he might do something as extreme as to take his own life, as the SM had disclosed that he believed he would have no benefits, he was worried about his future, and he felt he was a disappointment to his family (Enclosure 25, letter from SFC[redacted]

s. A buddy from a prior Army assignment, [redacted] was also in touch with the SM during that time and disclosed that he was really depressed that he had lost all his rank, lost his girlfriend, let his family down, and was going to lose all his Army benefits due to the under other than honorable conditions discharge (Enclosure 26, letter from [redacted] It is actually a common misunderstanding among Soldiers (and even commanders and young judge advocates) that an under other than honorable conditions discharge deprives a Soldier of all Department of Veterans Affairs (VA) benefits. The reality is that the VA looks for periods of honorable service, which the SM had, when making a benefits determination. HIs prior honorable discharge would have made him eligible for all VA benefits (see Enclosure 27 - Honorable Discharge Certificate), but it is clear he did not understand this.

t. Before the board, the SM was in contact with a childhood friend [redacted] and disclosed that he was in trouble, the Army was going to kick him out, he was worried about his future, and sounded very depressed (Enclosure 14).

u. In addition, we ask the Board to note that, as listed above, the SM had been prescribed Olanzapine, an antipsychotic medication which had been prescribed to him

for "severe mood instability." He had refilled the prescription on Saturday, 19 February 2022, just days after the separation board (Enclosure 28 - excerpt from CID report). This is an objective indicator of his poor mental state at that time.

v. The LOD report states that on 22 February 2022 (Tuesday), the SM reported for duty as normal, and for extra duty at 1710. He performed his duties without issue. That evening he apparently went to a local bar and eventually was found unresponsive, whereupon paramedics were summoned, and he was administered two doses of NARCAN, which revived him, but he declined further treatment.

w. Counsel was able to easily find multiple reputable resources that confirm what happens to a person who has overdosed on opioids and who is treated with NARCAN: the NARCAN blocks and reverses all the effects of the opioids, which means the pain and mental health problems that plagued the person all return immediately. In addition, NARCAN's effectiveness is temporary - without follow-on medical treatment, an overdose of opioids may still be fatal (see, for example, [redacted]

x. Whether the SM had a fatal dose of opioids in his system that killed him after the paramedics left and the NARCAN wore off, or the NARCAN simply returned him to his hopeless state and he took another fatal dose of opioids, is unknown. What is known is that just hours after the paramedics left him, he was found deceased. An autopsy confirmed that he died of the toxic effects of multiple drugs, including fentanyl and morphine. He had no history of abusing opioids.

y. Per Army Regulation 600-8-4 paragraph 4-12, suicide creates a rebuttable presumption that a Soldier who committed 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 in line of duty.

z. For the applicants, it is clear BG [redacted] was not provided relevant information from the medical records regarding their son's suicide risk. From the LOD report, it appears not even the investigating officer (IO) for the LOD report considered that the SM committed suicide - if the IO had reviewed the medical records, surely he would have complied with AR 600-8-4 paragraph 4-12d, which requires the IO to 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 4 August 2022 LOD report makes no reference to the SM's medical records, which were available. While BG [redacted] 27 March 2023 letter references a behavioral health opinion, it appears that opinion was based solely on behavioral health care the SM sought as part of a SUDCC program almost 2 years prior to his death -

there is no reference to the voluminous records detailing his mental health decline, especially in the last 6 months of his life.

aa. Counsel and the applicant believe the following are clear indicators the SM did not just die of a simple drug overdose, but rather took his own life in a state of despair and hopelessness:

(1) His record of treatment shows clearly that in December 2021, the SM was at high-risk for suicide.

(2) The results of his administrative separation board, which ended his 12-year career with an under other than honorable conditions discharge, along with his incorrect belief that the discharge would deprive him of all VA benefits.

(3) His refill of Olanzapine on 19 February 2022.

(4) His conversations with his supervisor, a Soldier-friend from a prior assignment, and a childhood friend - all of whom described his depression and hopelessness and who worried about his safety and mental state.

(5) The lack of any evidence that he had previously abused opioids.

(6) Once the NARCAN was administered, his refusal of any further medical treatment.

bb. The SM's family is not looking for anything other than an acknowledgment that their son was not responsible for his actions when he took his life. The SM was not married and had no children - his parents gain nothing financially from this request. As his medical record and the statements from those who knew him demonstrate that he lacked the mental capacity to comprehend the nature of his actions, the applicants welcome the opportunity to cooperate with a full forensic psychological autopsy, if it is determined that is necessary. They are also ready and willing to provide the SM's complete medical record for the Board to review - the medical record can be emailed to the Board or, if preferred, they will have it printed (1566 pages) and mailed to the Board. Please let us know if that is needed.

cc. The applicants were devastated by the death of their son. Their memories of their son are clouded by the LOD finding, which did not fairly consider all of the circumstances surrounding his death. With 12 years of service, 2 combat deployments, setbacks in his personal relationship, the lack of available support services during COVID-19, the over-prescription of drugs to treat his -symptoms, and the lack of command follow-up when his suicide risk level was raised to "High Acute Risk for Suicide", it is a profound injustice to the SM's family to have his death characterized as

not in the LOD - due to his own misconduct. Counsel and the applicants believe they have provided sufficient information to create a rebuttable presumption that the SM did commit suicide, and that his death should therefore be determined to have been in the LOD.

2. The SM enlisted in the Regular Army on 24 August 2010, and was awarded the Military Occupational Specialty (MOS) 11B (Infantryman).

3. The SM deployed to Afghanistan from 15 April 2012 through 8 January 2013.

4. The SMs ERB shows he was promoted to the rank/grade of sergeant (SGT)/E-5 on 1 March 2015 and to SSG/E-6 on 1 April 2017.

5. The SM reenlisted in the Regular Army on 22 May 2014 and again on 6 December 2016.

6. The SM deployed to Afghanistan a second time from 4 March 2018 through 12 November 2018.

7. DA Form 638 shows on 12 July 2018, the SM was recommended for award of the Army Commendation Medal with C Device, for meritorious service as a weapons squad leader while deployed in support of Operation Freedom's Sentinel. The award was approved on 7 August 2018 and an Army Commendation Medal Certificate, 1 November 2018, reflects the award for meritorious service as a weapons squad leader while deployed in support of Operation Freedom's Sentinel from 2 March 2018 through 15 November 2018.

8. The SM reenlisted in the Regular Army for a third time on 16 January 2019, giving him two periods of honorable service, from 24 August 2010 thorough 21 May 2014 (his first enlistment) and again from 6 December 2016 through 15 January 2019 (his second enlistment).

9. A DD Form 1610 shows on 25 July 2019, the SM requested TDY from Fort Carson, CO, to Fort Huachuca, AZ, to attend the Counter Intelligence Special Agent Course.

10. U.S. Army Installation Management Command Order 290-141, 17 October 2019, awarded the SM the primary MOS 35L (Counter Intelligence Agent) and withdrew the MOS 11B effective 28 January 2020.

11. An A Company, 309th Military Intelligence Battalion memorandum, 31 October 2019, advised the SM of his referred Academic Evaluation Report (AER). The reason for the referral is failure to achieve course standards while attending the

Counterintelligence Special Agent Course. The SM acknowledged receipt of the report and did not submit comments to the report.

12. A DA Form 1059 (Service School Academic Report), signed 1 November 2019, shows the SM failed to achieve course standards and was removed from the Counterintelligence Special Agent Course for failing a test and retest. His inability to complete the test requirements resulted in his being relieved from the course. Due to his relief from the course, he was unable to demonstrate the academic potential for selection to higher level schooling/training.

13. U.S. Army Installation Management Command Order 022-036, 22 January 2020, revoked the prior MOS order dated 17 October 2019, pertaining to the SM, thus restoring his MOS to 11B.

14. A Consult Report, 27 July 2020, shows the SM was seen by the behavioral health outpatient program due to an extensive history of alcohol use. He had been drinking four to five times weekly, consuming six to ten beers per sitting for the last two years. He had not had any success in stopping on his own and was seeking help for this.

15. [redacted] Department of Public Safety Incident Report shows on 5 December 2020, the applicant was arrested for speeding and DUI and transported to the county jail. The State Trooper initiated a traffic stop when he observed the SM speeding. When he approached the vehicle, he noticed a strong odor of alcohol. He tested the SM on the Alco-Senser, the results were positive, and the horizontal gaze nystagmus (HGN) field sobriety test reflected 6 present clues. The SM refused a blood alcohol test.

16. A Medical Record shows the SM was seen on 9 December 2020, at the Behavioral Health Clinic for a primary diagnosis of alcohol dependence. He went to Journey Pure for alcohol use disorder and felt it was not helpful, receiving a DUI the day after his discharge. His suicide risk level was evaluated as low.

17. An Army Substance Abuse Program (ASAP) memorandum, 28 January 2021, informed the SM"s company commander that the SM tested positive for cocaine on 4 January 2021.

18. A DA Form 4856 (Developmental Counseling Form) shows the SM was counseled by his company commander on 10 February 2021, regarding his positive urinalysis for cocaine on 4 January 2021, which was initially erroneously identified as marijuana use, but subsequently corrected to show a positive urinalysis for cocaine use.

19. A Department of the Army, Fort Benning, GA, memorandum, 22 February 2022, details a military law enforcement report into the civilian arrest of the SM of 5 December 2020, for speeding and DUI.

20. A Directorate of Emergency Services, Fort Benning, GA, memorandum, 22 February 2022, shows the SM's installation driving privileges were suspended immediately.

21. A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG) shows a drug abuse adverse action flag was initiated on the SM on 25 February 2021.

22. A DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ) shows the SM accepted nonjudicial punishment (NJP) under Article 15 of the UCMJ on 3 March 2021, for wrongfully using cocaine between on or about 22 December 2020 and 4 January 2021. Punishment included reduction in rank/grade to SGT/E-5 and extra duty.

23. The acronym "PUHLES" describes the following six physical factors used in the profiling system to classify medical readiness: "P" (Physical capacity or stamina), "U" (Upper extremities), "L" (Lower extremities), "H" (Hearing), "E" (Eyes), and "S" (Psychiatric). Physical profile ratings are permanent (P) or temporary (T). A Service Members level of functioning under each factor is represented by the following numerical designations: 1 indicates a high-level of fitness, 2 indicates some activity limitations are warranted, 3 reflects significant limitations, and 4 reflects one or more medical conditions of such a severity that performance of military duties must be drastically limited.

24. The SM's ERB, 4 March 2021, reflects his PULHES as 111111.

25. A General Officer Memorandum of Reprimand (GOMOR), 11 March 2021, shows the SM was reprimanded for his refusal to take a lawfully requested blood or breath test to measure his blood alcohol content on 5 December 2020, when [redacted] State Trooper conducted a traffic stop after he was observed driving at a high rate of speed, then later detected a strong odor of alcohol emitting from his person. He was advised this was an administrative reprimand and not punishment under the UCMJ and that he had the right to submit statements in rebuttal.

26. Counsel provided numerous additional medical records, dated between 19 April 2021 and 12 January 2022, which have all been provided in full to the Board for review and in pertinent part show:

a. A Medical Record shows the SM was seen on 19 April 2021, to complete the Periodic Health Assessment (PHA) Part II. His responses to questions suggested his suicide risk level was intermediate.

b. A Medical Record shows he was seen on 2 June 2021, for his primary diagnosis of alcohol use, unspecified with unspecified alcohol-induced disorder. The notes show a

documented history of behavioral health diagnosis, depression, anxiety, substance use disorder, insomnia. He reported his depression increased due to the social isolation of COVID. He was also charged with DUI in 2020 and tested positive for cocaine 2-3 months ago. He was demoted to SPC and was pending administrative discharge. He currently denied suicidal ideation, self-harm behaviors, homicidal ideation, violent behaviors, inappropriate or illegal behaviors.

c. A Medical Record shows he was seen on 19 October 2021, for therapeutic drug level monitoring.

d. Multiple additional Medical Records show he was seen numerous times between 20 October 2021 – 22 December 2021, for cocaine dependence. Of note, on 8 December 2021, he indicated having anxiety over finances, administrative discharge for misconduct vice medical discharge, sleep disturbances, guilt, or shame over mistakes over the past year, and having previous suicide attempts or ideations over the past 1.5 years; alcohol abuse in remission.

e. A Medical Record shows Behavioral Health saw the SM on 12 January 2022 with a primary diagnosis of major depressive disorder, recurrent, severe, without psychotic features. In accordance with Army Regulation 40-501 (Standards of Medical Fitness) he was deemed not fit for duty and was not worldwide deployable due to his behavioral health issues for which he was receiving treatment. Behavioral Health made Recommendation for a Medical Evaluation Board (MEB).

27. The SM's undated statement to Board of Officers/Administrative Separation Board, presumably from on or about February 2022, has been provided in full to the Board for review. In pertinent part it shows:

a. He requested the board members consider his entire service records prior to making their recommendations and he wanted to tell the story behind his misconduct. He deployed regretting the bad decisions he made over the past year and was fully responsible for his actions. He felt he had dishonored himself, the Army, his parents, his friends, and he reached the bottom of his decline.

b. He twice deployed to combat zones in Afghanistan and witnessed multiple American casualties, endured a constant barrage of rocket and mortar fire, and dealt with 18 hour days. When he returned from his second deployment, a series of events occurred in his life leading to the start of his downward spiral. The love of his life, with whom he had lived for 8years, left him 2 weeks before he returned from Afghanistan. He took a cab from the airport to find his home vacant, without any furniture. He felt like an emotionally broken person. Afterward, he decided to change his Army career path and star over, by trying to enter the Army intelligence community, but he was cut from the course without completing it. He had been trying to change his MOS, which he hoped

would dramatically change the nature of his military career because he was tired of living the Infantry life. He was emotionally and mentally exhausted and needed to make a change. He did not want to leave the Army, so he tried to make the best of it and agreed to go to Sniper school to be an instructor.

c. Upon reassignment to Fort Benning as a Sniper Instructor in December 2019, he felt like an outsider and not accepted in this small, tight-knit community. He felt like an outcast and became more depressed and isolated, then the pandemic his in March 2020 and certain services where he reached out for help were just not readily available. The isolation further increased his depression, anxiety, and sleep disorder. He started hanging out with the wrong type of people seeking acceptance. He believes he suffered from untreated sever mental depression and other untreated conditions that caused him to almost take his own life.

d. In the fall of 2020, he was given help on base and later admitted to a treatment facility where he spent a month away, where it was further confirmed he had depression, anxiety, and PTSD issues. Upon release, he made a really bad choice in December 2020 and again in January 2021 with cocaine use. Over the past year 2021, he developed an addition and was reduced in rank 4 times and failed numerous drug tests. In November 2021, he had another opportunity for inpatient treatment and learned tools to deal with his addiction. He was seeking a favorable discharge to allow him to continue to seek the treatment he needed through the VA, as without treatment, he struggled to maintain sobriety.

28. A DA Form 1574-2 reflects the Report of Proceedings by Board of Officers on 16 February 2022, convened to determine whether the SM should be separated from the Army under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 14, due to commission of a serious offense.

a. The findings show the allegation that the SM wrongfully used cocaine was supported by a preponderance of the evidence and did warrant separation. The allegation that he operated a motor vehicle at a high rate of speed under the influence of alcohol and refused to provide a lawfully requested sample of breath or blood was supported by a preponderance of the evidence and did warrant separation.

b. The administrative separation board recommended the SM's separation from the Army with an under other than honorable conditions characterization of service.

29. The SM's ERB, 23 February 2022, shows his PULHES was 221113, based on examination on 19 April 2021, with the rating of 3 in factor S. It also reflects the following additional demotions:

- SPC/E-4 effective 18 May 2021

- Private First Class (PFC)/E-3 effective 18 October 2021
- Private (PVT)/E-1 effective 11 February 2022

30. An LOD Report Request shows the applicants requested a copy of the LOD Investigation pertaining to their son on 21 March 2022.

31. A partial CID Form 94 reflects an Agent's Investigation Report, 24 March 2022, and shows:

a. The SM's medical records were reviewed. He was diagnosed between May 2011 to December 2021 with chronic PTSD, alcohol abuse, major depressive disorder, cocaine dependence, anxiety disorder, insomnia, obstructive sleep apnea, nicotine dependence, and testicular neoplasm.

b. From June 2020 to July 2021, he saw Behavioral Health and went through intensive outpatient program from which he was released and shortly thereafter relapsed.

c. His active prescriptions included Olanzapine to take as needed once a day for severe modo irritability and Hydroxyzine pamoate, to take once a day as needed for anxiety.

32. [redacted] Death Certificate, signed on 25 March 2022, shows:

a. The SM died on 23 February 2022 due to the toxic effects of multiple drugs.

b. Item 33 (Was Autopsy Performed) shows YES.

c. Item 34 (Were Autopsy Findings Available to Complete the Cause of Death) shows YES.

d. Item 37 (Accident, Suicide, Homicide, Undetermined) shows ACCIDENT.

e. Item 41 (Describe How Injury Occurred) shows SUSPECTED DRUG OVERDOSE.

33. A DD Form 1300, 22 June 2022, provides a Report of Casualty and shows the SM's casualty date was 23 February 2022; it was a nonhostile accident; and the circumstances show toxic effects of multiple drugs, per the Certificate of Death.

34. A DD Form 261, 4 August 2022, reflects the Report of Investigation – LOD and Misconduct Status and shows the investigation into the SM's death on 23 February 2022, determined:

- intentional misconduct or neglect was the proximate cause of death
- the SM was mentally sound
- the medical diagnosis was accident, sustained through toxic effects of multiple drugs
- the finding was not in the LOD – due to own misconduct

35. A corresponding LOD Investigating Officer memorandum, 4 August 2022, shows the findings for the formal LOD investigation into the events and circumstances surrounding the death of the SM. It shows:

a. The SM died at his off post residence on 23 February 2022. His death was an accident caused by the toxic effects of multiple drugs, and wrongful use of controlled substances.

b. After having reported to extra duty on 22 February 2022, he later visited the Maple Bar that evening and was found passed out in the street by multiple friends. He was later found unresponsive at his residence and given two doses of NARCAN by paramedics but refused further treatment. On 23 February 2022, he was found laying on his bed not breathing. 911 was called and he was pronounced deceased by the Muscogee County Deputy Coroner.

c. The Armed Forces Medical Examiner completed an autopsy report on 19 May 2022, which shows the cause of death was the toxic effects of multiple drugs. The toxicology report found his blood was positive for fentanyl, cocaine, cocaethylene, morphine, hydroxyzine, trazodone, sertraline, and ethanol.

d. After carefully considering the evidence, it was found the SM's death was not in the LOD – due to own misconduct based on the Armed Forces Medical Examiner's autopsy and toxicology report and the presence of multiple controlled substances in his blood at the time of death.

36. A DA Form 2173, 22 August 2022, provides a Statement of Medical Examination and Duty Status and shows the SM was examined at Martin Army Community Hospital on 23 February 2022, after his death. He was not considered in an AWOL status at the time and had previously been reported present for duty. A formal LOD investigation was required.

37. An AHRC, Casualty and Mortuary Affairs letter, 30 September 2022, addressed to the applicants, shows:

a. Heartfelt condolences were extended to them for the loss of their son. The Army's Casualty and Mortuary Affairs Division regrated to inform them 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 willingly committed the offense of wrongful use of controlled substances.

b. Adverse findings in LOD cases may result in the loss of certain benefits such as, but not limited to Dependency and Indemnity Compensation from the VA and it was recommended they apply for VA benefits regardless of the Army LOD determination, as the VA would make an administrative decision by reviewing the military service treatment and personnel records.

c. They were advised of their right to appeal the findings of the AHRC within 3 years of the date of the LOD determination.

38. A follow-on letter from the SM's mother to AHRC, Casualty and Mortuary Affairs Division, 2 March 2023, shows:

a. Their son died on 23 February 2022, at his home in Fort Benning, GA. At the time of his death, he was active duty and in the process of transitioning out of the Army after 12 years of service. The military performed an autopsy at her request and the results indicated multiple drugs in his system at the time of his death, including fentanyl.

b. She is writing this account as an appeal in response to the letter they received from the U.S. Army Casualty and Mortuary Affairs Operations Division dated 30 September 2022, in which they were informed that their son's death had been determined to be "Not in Line of Duty." The letter further stated that "evidence contained in an investigation indicated that he died by willingly committing the offense of Wrongful use of Controlled Substances." To say that his demise was not directly related to his service to this country is incorrect- and offensive.

c. So how did we get here? Her son was a SSG and a sniper instructor when he was assigned to Fort Benning in the fall of 2019. Prior to this assignment, he had served our country for 10 years, including two tours in Afghanistan. Following these deployments, he was diagnosed with PTSD, depression, and insomnia, along with a range of issues related to those returning from war zones. He was a whole individual when he entered the Army and broken mentally at the age of 35. His situation surely was exacerbated by the events surrounding the COVID pandemic of 2020. The forced isolation from that time kept him from receiving the help he needed from the Army when he most needed it. In the brief period of one year, he was demoted from SSG to PFC.

d. What group of officers could fail to see that he was in crisis? Who allowed this downward spiral to continue? Their son's death was a result of his leadership failing to intervene with the correct medical tools to save his life. As an NCO in Afghanistan, he took care of his men. Who was looking out for him?

e. As parents, they knew little about his troubles. They did not know he had been demoted. They knew· something was wrong when he started telling them about his upcoming medical board and discipline hearing, which they thought were one and the same, and that he was returning home. He told them that he felt he had accumulated a medical history that would have him dismissed from the service. He died withing a week following that hearing, which was held around 16 February 2022. Upon notification of his death, she immediately flew to his home, to determine what she could about what had happened. She gathered important documents, his dog, and multiple drugs that had been issued to him by the Army. The prescription drugs issued to him were the strongest doses for PTSD, anxiety drugs, which supported his medical board status.

f. She also was made aware at that time by the police that there was an ongoing CID investigation related to her son's death, which she aided on several occasions. When the Army finally mailed them his cell phone in May 2022, because the CID people were unable to unlock it, she was able to unlock it. She discovered through text messages that he was working as a confidential informant for a law enforcement agency. She sent copies of his text messages to the CID investigators, which they thought would be helpful to them. They have yet to receive a final report from CID. At the time of his death, their son was working to make amends in support of his desire to continue serving his country.

g. She and her husband want to contact anyone who can help make right this injustice. Yes, they are grieving parents, and yes, their son made some bad decisions, but the manner of his death should not wipe out the good Soldier that he was. The military should have considered his entire record; he gave the Army 12 years of his young. He had exemplary service for 10 of his 12 years of service. He served on three deployments, one to Indonesia, and two to Afghanistan. He had the dignity and courage to serve our country, and they are asking that his dignity be returned posthumously.

h. It is no secret that the Army has a problem with morale and mental health, especially with individuals who come home from war zones. Soldiers who come home and are mentally damaged are reluctant to seek the help they need because of the stigma of being considered weak. The military goes to wonderful, miraculous, and unceasing efforts to heal their troops who have suffered physical injuries, but mental injuries go untreated or are minimally treated, with a month or two in treatment and then transitioned out and often left to fend for themselves. Their son's death was in the LOD, and he did not die knowingly trying to dishonor his country. It is an affront and an insult to her, her husband, and their family that his death be labeled as "Not in the LOD." They respectfully ask for help in appealing the LOD decision.

39. An Office of The Adjutant General letter, 27 March 2023, responded to the applicants, and shows:

a. They extended their heartfelt condolences for the loss of their son.

b. Army Regulation 600-8-4, Line of Duty Policy, Procedures, and Investigations, under Terms for Preponderance of Evidence it states: "Findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion." Appendix B, Rule 3 states Incapacitation because of the use of alcohol or other drugs that results in injury, illness, disease, or death is due to misconduct and is not in the line of duty (NLD). This is not intended to prohibit the otherwise lawful use of alcoholic beverages. Controlled substance analogues (designer drugs), such as synthetic cannabis and other tetrahydrocannabinol (THC) substitutes ("Spice"), derivatives of 2-aminopropanol ("Bath Salts"), synthetic cocaine ("RTI-126"), or any other substance similarly designed to mimic the effects of a controlled substance on the human body without an approved medical use in the United States are prohibited. Use of chemicals, propellants, or inhalants (huffing}, which result in injury, illness, disease, or death, is intentional misconduct and will therefore be considered Not in Line of Duty.

c. The AHRC requested a behavioral health opinion due to their appeal, indicating possible behavioral health issues from their son's 12 years of military service. He self-referred to behavioral health care through the SUDCC program on 26 May 2020 for ongoing struggles with coping with the loss of an 8-year relationship, for which he had been self-medicating with alcohol. During the intake evaluation, he was assessed for suicidal/homicidal ideation (SI/HI), depression, post-traumatic stress disorder, anxiety, alcohol abuse and sleep disorders. This initial assessment demonstrated mild depression, little to no PTSD symptoms, moderate anxiety, severe alcohol use/abuse, mild-moderate insomnia with no SI/HI.

d. Over the next 20 months, with three failed drug tests and a DUI charge, their son was in and out of extensive inpatient and outpatient treatment. On 22 February 2022, less than 24-hours prior to his death , paramedics were called to him, where they administered two doses of NARCAN, but he refused further treatment. The autopsy post-mortem toxicology report was positive for fentanyl, cocaine, metabolites of cocaine and alcohol, morphine, hydroxyzine, trazodone, sertraline, and alcohol. With witnesses making no mention of illicit drug use, other than cocaine, it is suspected his cocaine was laced with fentanyl and morphine.

e. With the evidence presented to them in this case, The Adjutant General determined the finding of "Not in Line of Duty-Due to own Misconduct" will stand. They were advised of their right to appeal this decision to the Army Review Boards Agency (ARBA).

40. AHRC, LOD Appeals email, 5 July 2023, expressed condolences and informed the applicants the applicants that the LOD determination was based solely on the information provided in all of the reports, their appeal, and the requirements laid out in

Army Regulation 600-8-4. They were highly encouraged to appeal to ARBA and to continue their fight for their son.

41. An AHRC, FOIA Office letter, 29 September 2023, offered the applicants their condolences and provided them a copy of the requested LOD documentation. A follow-up email from 26 October 2023, corrected an issue with delivery of the LOD documents and requested their delivery to the applicant's home address.

42. Counsel provided a photograph of the applicants, sitting behind the numerous bottles of prescription medication their son had been prescribed by Army doctors.

43. Counsel provided three letters of support, which have been provided in full to the Board for review and in pertinent part show:

a. A letter of support from [redacted] undated, shows he and the SM had been friend since childhood. Even when the SM joined the Army and left [redacted], they regularly spoke on the phone. Everything seemed fine until he moved to Georgia, and he could tell his friend was depressed. He told him he was having problems sleeping and other health problems. He called him on Father's Day 2020 and told him he had a gun and some drugs and was planning to take a bunch of drugs and kill himself. He tried to talk him out of it and then called his dad. They spoke many times about him leaving the Army and going to work for him in [redacted], when he said he was in trouble and going to get kicked out. He was worried about his future and sounded very depressed. His death was extremely hard on him because they were friends, and he knew something was wrong toward the end.

b. A letter of support from [redacted] undated, shows he served with the SM at JBLM and was like a brother to him. They stayed in contact after he got out of the Army in 2014, got together in 2015, and spoke on the phone. The SM said he was having a really tough time after his deployment to Afghanistan and then his girlfriend left him. He got in trouble and told him he was going to be "chaptered" out of the Army. They spoke after the separation board, and he sounded really depressed. He did not know what to do because he was living in Iowa at the time. He was really sad when he heard he had died, as he was worried he might try to end his life.

c. A letter of support from [redacted] 15 December 2023, shows the SM was one of his subordinates and he saw him struggle with anxiety, depression, and PTSD, all of which seem to be treated the same way, with prescription drugs. The SM started to self-medicate as his way to deal with his behavioral health problems and his setbacks in life. After losing rank multiple times and facing a separation board, he was worried he would not be entitled to any benefits. He was worried about his future and what a disappointment he was to his family. He spoke with the SM after the board and was worried he might commit suicide; he reassured him he was fine. They failed the SM; he

should not have been left alone after the board on a long weekend and wound up taking his own life. The Army knew he was struggling, yet decided to treat him with prescription drugs, punishment, and discharge.

44. In the adjudication of this case, an advisory opinion was obtained from AHRC, Casualty and Mortuary Affairs Operations Division on 17 October 2024, which shows:

a. The official cause of the SM's death, as reported by the BA Medical Examiner on his death certificate is the diagnosis of record. The diagnosis states the Soldier passed from toxic effects of multiple drugs. This finding, or a change to this finding, can only be made by the Georgia Medical Examiner.

b. The behavioral health request on behalf of AHRC provides the Soldier and the family the benefit of the doubt for a behavioral health specialist to review a case in its entirety so the U.S. Army can provide the most informed decision. The behavioral health opinion AHRC obtained on 23 March 2023, states, "In conclusion, [the SM's] behavioral health conditions that contributed to his loss of life were not resultant from his military service. It was his inability to adequately and appropriately cope with struggles or the loss of a romantic relationship, which led to his alcoholism and illicit drug abuse, and ultimate demise."

c. AHRC supports Soldiers and families to exercise their appeal right to ARBA when the finding is not in the LOD. Although AHRC did not directly reference the SM's medical records in the determination memorandum, a full record review was conducted and considered in making the determination. Each case is determined on its own merits and those merits are determined by several factors, one being the cause of death. Army Regulation 600-8-4 requires that the case must show a preponderance of evidence. The only evidence provided in this case supports a drug overdose.

d. AHRC stands by the determination of not in the LOD – due to own misconduct in accordance with the policies and procedures provided by the U.S. Army.

e. Counsel and the applicants were provided a copy of the AHRC advisory opinion and given an opportunity to submit comments in response or rebuttal but did not do so.

45. Also in the adjudication of this case, CID provided numerous redacted CID and Military Police (MP) reports pertaining to the SM, his drug use, civil arrest for DUI and speeding, and his death, all of which have been provided in full to the applicants, Counsel, and the Board for review. The contents of these reports have been previously discussed in this Record of Proceedings. Counsel and the applicants were given an opportunity to submit comments in response or rebuttal to the CID and MP reports but did not respond.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and SM's military records, the Board determined that the applicant did not demonstrate that an error in the finding that the SM's death was due to multiple drug use. The Board reviewed and concurred with the HRC surgeon finding the SM's behavioral health conditions that contributed to his loss of life were not resultant from his military service. Based on a preponderance of the evidence, the Board determined the finding of "Not in Line of Duty – Due to Own Misconduct" is not in error or unjust.

BOARD VOTE:

Mbr 1	Mbr 2	Mbr 3	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
[redacted]	[redacted]	[redacted]	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.

3/26/2025

X [redacted]

CHAIRPERSON

[redacted]

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. 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.

2. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations), 15 March 2019, 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 U.S. Army Reserve (USAR)/Army National Guard (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 absent without leave (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. 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 facilities; 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). 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). 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 their 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 Military Treatment Facility (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 rebuts 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.

3. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. Paragraph 2-11 states applicants do not have a right to a formal hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//