

IN THE CASE OF: ██████████

BOARD DATE: 21 December 2023

DOCKET NUMBER: AR20230003559

APPLICANT REQUESTS: in effect, approval of his self-initiated in Line of Duty (LOD) Investigation of 23 May 2022.

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

- ARBA online application in lieu of DD Form 149 (Application for Correction of Military Record)
- DD Form 3024 (Annual Periodic Health Assessment), dated 18 October 2020
- DD Form 2807-1 (Report Medical History), dated 4 December 2020
- DD Form 3024 (Annual Periodic Health Assessment), dated 3 December 2021
- DD Form 2807-1 (Report Medical History), dated 19 January 2022
- Chronological Record of Medical Care, dated 19 January 2022
- Soldier's Rights and Warning Statement, dated 23 May 2022
- Authorization for Disclosure of Medical or Dental Information, dated 23 May 2022
- DD Form 3024 (Annual Periodic Health Assessment), dated 19 January 2023
- Disability Counseling Statement, dated 23 May 2022
- DA Form 2823 (Sworn Statement) applicant, dated 23 May 2022
- DA Form 2823 CW2 ██████████, dated 24 May 2022
- email string, subjected: LOD documentation, 24 May 2022 through 15 February 2023
- medical record (33 pages)

FACTS:

1. The applicant states:

a. He self-initiated an LOD on 23 May 2022. He has been told that this LOD has been administratively closed due to the injury occurring over 180 days prior to the LOD being initiated. The day of injury was 31 July 2020. He believes this LOD should have been initiated by the medical personnel when he alerted the flight nurse of the back pain he was experiencing. DD Form 2807-1, dated 4 December 2020, shows when the flight nurse was alerted of the back pain.

b. He began this LOD on 23 May 2022. It has been 9 months in the process where he has been told to seek treatment and continue with the LOD process. He has submitted all paperwork including an Exception to Policy (ETP) memo. He has been told ETPs are no longer accepted and the LOD has been administratively closed since it was initiated over 180 days after the injury. He believes the medical department is at fault. The injury occurred on 31 July 2020. He saw his flight nurse for his yearly flight physical and alerted her of his condition on 4 December 2020. Between the day of injury and alerting his healthcare provider was 126 days, within the 180 day window. He was told to first seek treatment, then to start the LOD process. He does not believe he should have been the one to start this process. He was not aware of the rules for the timelines and the required procedure. He submitted all documents when asked of him for the LOD. It is only because of the 180-day window that it has been administratively closed. The treatments, scans, and tests have cost him thousands of dollars. He wishes to have this LOD covered so he can continue to seek treatment and receive physical therapy.

2. The applicant enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) and as a Reserve of the Army on 5 June 2014. He was later commissioned as a Reserve Officer in the [REDACTED] ARNG and the Army Reserve on 14 May 2017. He is currently serving as a member of the [REDACTED] ARNG.

3. The applicant provided the following:

a. A DD Form 3024, dated 18 October 2020, shows he was fully medically ready. He did not indicate any significant defects.

b. A DD Form 2807-1, dated 4 December 2020, showing he reported he was in good health with a history of hernia in 2011. He answered yes to the question: have you ever had, or have you been advised to have any operation or surgery? Block 29 (Explanation of Yes Answers) states as the final entry: [4 December 2020] ... At National Training Center (NTC) in July, had some low back pain after ruck marching, carrying equipment. No continued complaints at this time.

c. A DD Form 3024, dated 3 December 2021 shows he was partially medically ready as he was missing a required laboratory test. He did not indicate any significant defects.

d. A DD Form 2807-1, dated 19 January 2022, showing he reported he was in good health with a history of hernia in 2011. He answered yes to the question: have you ever had, or have you been advised to have any operation or surgery? Block 29 (Explanation of Yes Answers) states as the final entry: [4 December 2020] ... At NTC in July, had some low back pain after ruck marching, carrying equipment. No continued complaints at this time. A corresponding Chronological Record of Medical Care shows the following

statement: ...presents for annual flight physical. Overall, in good health, has some low back pain that started after NTC in July 2020. States they were unloading and loading vehicle for several hours. Initially he thought the back pain was muscular and treated with rest, ice and Motrin as needed. The pain is still there and at times is much worse. He also states he feels like he has a small knot in his left lower back.

e. Soldier's Rights and Warning Statement dated 23 May 2022 showing the applicant acknowledged his right that he does not have to make any statement relating to the origin, incurrence or aggravation of the injuries. A corresponding Authorization for Disclosure of Medical or Dental Information was attached with the afore discussed Chronological Record of Medical Care.

f. DD Form 3024, dated 19 January 2023, shows in Section X (Other Medical (OTH)) the applicant rated his pain at 0 = no pain. He also indicated since his last Periodic Health Assessment (PHA) he was being treated for back pain from NTC, awaiting LOD investigation. Part B (Record Review and Recommendations), Section II (Medical Screening), item 11 (list documented significant care the Service member has received since their last PHA from a provider OUTSIDE the Military Health System...) states LOD (back pain). It also indicates no inside care was documented. Part C, Section VI shows he was found fully medically ready.

g. A Disability Counseling Statement, dated 23 May 2022, showing he acknowledged the conditions required for him to be eligible for continuance of pay and allowances while disabled from an injury/aggravation/illness/disease incurred in the line of duty.

h. A Sworn Statement from the applicant, dated 23 May 2022, stating during the company's NTC rotation in July - August 2020 he started to experience lower back pain. During the rotation he was frequently loading/unloading vehicles of equipment such as weapons/tough boxes/rucksacks/tables/operations equipment/tents and poles/netting. During this time, he also was loading/unloading aircraft as well as flying. While at NTC the tempo was consistent enough as to where he did not want to break and get assistance. The pain began during this time but has become more severe the past few years. He has annotated the pain each year during his flight physical before recently seeking medical attention.

i. A Sworn Statement from CW2 [REDACTED], dated 24 May 2022, stating during training at NTC in 2020, the applicant had complained of back pain or some issue with his back which was causing discomfort. Due to the location of the training and the limited availability of medical facilities, along with the operation tempo of the training, the applicant thought he could seek treatment at a later date in order to complete the training during the NTC rotation. They disassembled and reassembled tents, lifting heavy objects, constantly flying missions, wearing kit in 100+ degree temperatures and

worked 14 hour days. The applicant complained of pain often but was able to work through it to complete the training.

j. An email string subjected: LOD documentation, 24 May 2022 through 15 February 2023, between the applicant and other members of the [REDACTED] ARNG discussing the LOD process.

k. Medical records (33 pages) in support of his claim.

4. The ABCMR requested an advisory opinion from the Army National Guard Readiness Center (ARNGRC) on 19 July 2023. The following response was received on 7 November 2023 recommending disapproval:

a. [The applicant] requests that an LOD be initiated due to an injury that occurred on 31 July 2020. [The applicant] claims that an LOD should have been initiated when he alerted the medical flight nurse of back pain he was experiencing.

b. While ordered to active duty for training from 23 July 2020 to 7 August 2020 at the National Training Center (NTC) Fort Irwin, CA, [the applicant] then experienced some low back pain after ruck marching and carrying equipment per medical notes signed by an Army Nurse on 4 December 2020.

(1) No medical treatment has been documented in the [the applicant]'s medical records from the time the [the applicant] first experienced the lower back pain until March 2022 other than seeing the flight doctor during his physical.

(2) Notes provided by the [REDACTED] Army National Guard ([REDACTED] ARNG) of the review of the [the applicant]'s claim state that the [the applicant] did not seek any medical at the time of the injury.

c. A Line of Duty (LOD) investigation was initiated on 13 July 2022, per inquiries from [the applicant] who had been requesting assistance for an LOD investigation to be opened due to his service-connected lower back pain which had occurred while at NTC.

(1) The LOD investigation conducted by the [REDACTED] ARNG revealed that the [applicant] did experience lower back pain, but that [the applicant] did not seek any further treatment of the pain until March 2022, when he experienced an aggravation of the lower back pain while at Inactive Duty Training (IDT).

(2) The investigation was later closed because the claim incident was outside the 180-day window which violated DoDI 1241.01, however information was later received from NGB and HRC that allowed for reconsideration request to be sent forward to HRC.

d. At the time of the incident [the applicant] did not seek treatment for his back pain, and there is no documentation to support reporting the injury, other than on flight physicals. Official medical care was completed approximately 24 months after the injury.

e. Army Regulation 600-8-4 (Line of Duty Policy, Procedures, and Investigations) Chapter 2, Requirements for line of duty investigations, states that an LOD investigation will be conducted for all Soldiers regardless of component if the Soldier experiences a loss of duty time for a period of 24 hours, and requires follow-on care for an injury, illness, or disease incurring during a period of active duty.

f. DoDI 1241.01, dated 19 April 2016, and PPOM 17-022 Implementing guidance for Army National Guard LOD, procedures and investigations states that a Soldier has 180 days after completion of the qualified duty status to request consideration for an in-LOD determination.

g. This agency recommends disapproval for the initiation of a LOD on [the applicant]'s injury based on AR 600-8-4, chapter 2. The [applicant] did not seek treatment initially for this injury, and there is no documentation to support that an injury occurred other than the [applicant] reporting back pain during his inflight physical. The [applicant] did not have any medical treatment on his back pain that can be documented until 24 months after the claim injury occurred. Furthermore, the [applicant] acknowledged that the timeline for initiating an LOD has passed in accordance with DoDI 1241.01, and PPOM 17-022.

h. The opinion was coordinated with the assistance of the Army National Guard Line of Duty section and the [REDACTED] Army National Guard.

5. The applicant was provided the advisory opinion from the National Guard Bureau, Arlington, VA and provided an opportunity to respond. He did not respond within the allocated time.

6. MEDICAL REVIEW:

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

b. The applicant is applying to the ABCMR requesting an affirmative line of duty determination (LODD) for his lumbar back pain/injury. He states:

“I self-initiated an LOD on 23 May 2022. I have been told that this LOD has been administratively closed due to the injury occurring over 180 days prior to the LOD being initiated. The day of injury was 31 July 2020. I believe this LOD should have been initiated by our medical personnel when I alerted our flight nurse of the back pain I was experiencing. Document 2807 2021 show when the flight nurse was alerted of the back pain ...

I do not believe I should have been the one to start this process. I was not aware of the rules for the timelines and the required procedure. I submitted all documents when asked of me for the LOD. It is only because the 180 window it has been administratively closed. The treatments, scans, and tests have cost me thousands of dollars. I wish to have this LOD covered so I can continue to seek treatment and receive physical therapy.”

c. The Record of Proceedings outlines the applicant’s military service and the circumstances of the case.

d. The Advisory Opinion from the National Guard Bureau clearly explains several of the reasons for the appropriate administrative closure of the applicant’s 23 May 2022 “self-initiated” LOD and so it’s findings will not need to be repeated here.

e. In addition, three months after his reported back July 2020 injury, the applicant completed his 18 October 2020 Periodic Health Assessment (PHA - DD Form 3024). He marked “No / Does not apply to me” to the question “Since your last PHA, how you experienced recurring muscle, joint, or back pain that either required medical care or impacted your duty performance, or both?” He indicated he had not experienced pain in the preceding 24 hours. No medical issues were identified and the applicant was declared “Fully Medically Ready.”

f. On his 25 January 2022 PHA, the applicant again marked “No / Does not apply to me” to the question “Since your last PHA, how you experienced recurring muscle, joint, or back pain that either required medical care or impacted your duty performance, or both?” Again, he indicated he had not experienced pain in the preceding 24 hours and no medical issues were identified.

g. On his 6 February 2023 PHA, the applicant again marked “No / Does not apply to me” to the question “Since your last PHA, how you experienced recurring muscle, joint, or back pain that either required medical care or impacted your duty performance, or both?” He again indicated he had not experienced pain in the preceding 24 hours ,no medical issues were identified, and he was declared fully medically ready.

h. On this 2023 PHA, when asked to “List the condition(s) treated and where the care was provided” : “Back pain form NTC, awaiting LOD investigation. Wheeling Hospital.”

i. Finally, it is standard procedure for final formation and/or section meetings at the end of every drill weekend or annual training for leadership to ask if anyone has an injury that may need a Line of Duty. This Officer likely had an opportunity at that time in 2020, or even during the many drill weekends he attended following annual training to make this issue known.

j. It is the opinion of the Agency medical advisor there is insufficient documentary evidence to warrant an affirmative line of duty determination.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board concurred with the conclusion of the advisory official that the evidence does not indicate the applicant incurred an injury in 2020 that required medical treatment at the time. As such, the Board determined there is no basis for an LOD determination for the claimed injury outside of the 180-day limit prescribed by the governing Department of Defense instruction.

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.

2/27/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Army Regulation 600-8-4 (Line of Duty (LOD) Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. A formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a

degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

//NOTHING FOLLOWS//