

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20240000019

APPLICANT REQUESTS: correction of Orders Number 267-005 to reflect continuous active duty service from 31 October 2020 to 18 November 2020.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 067-194, 8 March 2019
- Orders Number 267-005, 23 September 2020
- DA Form 2173 (Statement of Medical Examination and Duty Status), 20 October 2020
- Memorandum – Subject: Line of Duty Determination, 26 October 2020
- Orders Number NG-0324-00004, 19 November 2020
- DA Form 3349 (Physical Profile Record)
- Memorandum – Subject: Incapacitation (INCAP) Review Board Meeting Minutes, 28 October 2022
- Memorandum – Subject: Denial of INCAP Pay – Tier 1, 31 October 2022
- DA Form 1559 (Inspector General Action Request), 14 March 2023
- Orders Number NG-0324-00004A02, 8 April 2021
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 22 April 2021

FACTS:

1. The applicant states in pertinent part that he was on Active-Duty Training (ADT) orders from 14 March 2019 – 30 October 2020 when he sustained a shoulder injury which later required surgery to repair. The surgery was performed on 8 September 2020 which was immediately followed by rehabilitation therapy performed at his duty station. He was then advised that his orders were going to transition into a Reserve Component Managed Care – Training (RCMC-T) order and he would need to proceed on a permanent change of station assignment without a break in service. On 30 October 2020, he relocated back to his home of record and continued to receive medical care at the local military treatment facility. In November 2020, he advised his leadership that he did not receive his mid-month pay. His unit then issued a RCMC-T order effective

19 November 2020, which reflected a break in service from 31 October 2020 – 18 November 2020. He sought the assistance of his leadership but was advised that neither the ADT order nor the RCMC-T order could be amended due to the timeliness of his request. He later requested Incapacitation Pay for the period of his break in service, but this too was denied. He argues that in accordance with Department of Defense Instruction 1241.01 (Reserve Component (RC) Line of Duty (LOD) Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements), he should have remained on orders until his rehabilitation therapy was complete because he had an approved LOD, was on orders in excess of 30 days and never elected to be released from active duty.

2. A review of the applicant's service records show:

a. After serving in the active component, the applicant was honorably released and transferred into the U.S. Army Reserve (USAR) Control Group (Reinforcement) on 11 July 2004.

b. On 19 May 2017, the applicant enlisted in the Army National Guard (ARNG).

c. On 20 February 2019, the applicant was honorably discharged and subsequently appointed as a Reserve commissioned Warrant Officer and retained in the ARNG.

d. On 8 March 2019, the SCARNG issued Orders Number 067-194 ordering the applicant to active duty, effective 14 March 2019 to 14 March 2020.

e. On 6 March 2020, the SCARNG issued Orders Number 066-050 amending Orders Number 067-194 to reflect an end date of 30 September 2020 rather than 14 March 2020.

f. On 23 September 2020, the SCARNG issued Orders Number 267-005 amending Orders Number 067-194 to reflect an end date of 30 October 2020 rather than 30 September 2020.

g. On 1 November 2020, the applicant was released from active duty.

h. On 19 November 2020, the National Guard Bureau (NGB) issued Orders Number NG-0324-00004, ordering the applicant to active duty to complete medical care and treatment for a period of 90 days, effective 19 November 2020.

i. On 12 March 2021, the SCARNG issued Orders Number 071-0007 ordering the applicant to Full-Time National Guard Duty, effective 9 April 2021 for a period of 3 years.

3. The applicant provides:

a. DA Form 2173 dated 20 October 2020, reflective of the applicant sustaining a shoulder injury during training on 19 December 2019. A formal LOD investigation was not conducted however the injury was determined to have incurred in the LOD.

b. Memorandum – Subject: Line of Duty Determination dated 26 October 2020, reflective of the applicant's approved LOD determination (approved) pertaining to the shoulder injury incurred on 19 December 2019.

c. DA Form 3349, reflective of the applicant being placed on a performance limiting profile due to a sustained shoulder injury; expiration date of 8 December 2020.

d. Memorandum – Subject: Incapacitation Review Board Meeting Minutes dated 28 October 2022, reflective of information pertaining to the board's review of the applicant's submitted request for INCAP pay and subsequent denial due to varying reasons to include lack of documentation indicating that he was unable to perform his military duties between 31 October 2020 – 18 November 2020 and a lack of employment income loss verification on DA Form 7574.

e. Memorandum – Subject: Denial of INCAP Pay – Tier 1 dated 31 October 2022, reflective of the applicant being afforded 30 days to appeal the board's decision to deny his entitlement to INCAP pay by providing additional supporting documentation based upon the information detailed in the board minutes.

f. DA Form 1559 dated 14 March 2023, reflective of the applicant's submitted request for assistance with obtaining amended orders which would void the break in service from 31 October 2020 – 18 November 2020.

g. Orders Number NG-0324-00004A02 dated 8 April 2021, reflective of Orders Number NG-0324-00004 being amended to reflect an end date of 8 April 2021 rather than 22 April 2021.

4. On 12 September 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request noting that after review of the his submission and coordination with the NGB's Medical Actions Branch it was determined the he was not placed on continuous orders based on when the 12301(H) orders request packet was submitted by the State and the time that was requested. The Medical Actions Branch agrees with the denial of INCAP pay as the applicant did not meet the requirements to receive this benefit. It is evident by the 12301(H) orders that the condition was not resolved, and the applicant states he believed he would be on continuous orders. The applicant should receive an

amendment to orders 267-005 to end 18 November 2020 due to an LOD approved injury still requiring treatment.

5. On 18 September 2024, the applicant was provided with an opportunity to respond. He has not responded.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advisory finding the applicant was on active duty training orders from 14 March 2019 to 30 October 2020 and was injured during training and received an approved line of duty determination, which required additional rehabilitation. He received 12301(h) orders from 19 November 2020 to 16 February 2021; however, no orders from 31 October 2020 through 18 November 2020 as he should have remained on orders. The Board determined his orders should be amended to reflect continuous active duty service with appropriate pay and allowances.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by:

- amending Orders 267-005, State of South Carolina Military Department, Office of the Adjutant General, dated 23 September 2020, to show 31 October 2020 to 18 November 2020
- entitlement to back pay and allowances as a result of this correction

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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. Department of Defense Instruction 1241.01 (Reserve Component (RC) Line of Duty (LOD) Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements) Section 5 (Authority to Order to Active Duty for Medical and Dental Treatment) provides that with his or her consent, an RC Service member may be ordered to Active Duty (AD) in accordance with section 12301(h) of Reference (e) when authorized by the Secretary of the Military Department concerned and, in the case of a member of the National Guard, with the consent of the Governor or other appropriate authority of the State concerned to receive authorized medical care.

a. With his or her consent, an RC Service member ordered to AD under section 12301(h) of Reference (e) may be retained on AD in accordance with that section for medical treatment for a condition associated with the study or evaluation, if his or her treatment is otherwise authorized by law and determined appropriate by the Secretary of the Military Department concerned.

b. An RC Service member who incurred a covered condition while serving on active duty for a period of 30 days or less may be ordered to or continued on orders to receive appropriate medical and dental treatment for a covered condition in accordance with section 12322 of Reference (e) if the covered condition occurred while serving on inactive duty training or traveling to/from such duty.

c. An RC Service member who has been ordered to or retained on AD in accordance with paragraphs 5a or 5b of this section, resulting in a continuous period of AD of more than 30 days, is entitled to medical and dental treatment in accordance with section 1074 of Reference (e). The RC Service member's authorized dependents are also entitled to medical and dental treatment in accordance with section 1076(a)(2)(D) of Reference (e).

2. Title 10, United States Code, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Further, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

//NOTHING FOLLOWS//