

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 November 2024

DOCKET NUMBER: AR20240001603

APPLICANT REQUESTS: approval of a line of duty (LOD) determination for an injury sustained in March 2020.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 689 (Individual Sick Slip)
- 5 pages of medical records
- two email messages dated March and April 2020

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states she is submitting the Individual Sick Slip for processing of the LOD determination.
3. The applicant enlisted in the Army National Guard (ARNG) on 25 May 2010.
4. The applicant provided a DD Form 689 and medical records showing that on 8 March 2020, while running, her right hip began to get tight and her knees started to hurt. The remarks section of the DD Form 669 shows x-rays were done and the entry: hip and knee pain and muscular pain and muscle strain.
5. The applicant also provided two email messages, dated March and April 2020, where it appears she was providing medical documents to a member of her ARNG unit for an LOD determination.
6. Orders issued on 17 June 2020 show the applicant was discharged from the ARNG effective 24 May 2020 by reason of completion of required service.

7. During the processing of this case, an advisory opinion was obtained from U.S. Army Human Resources Command (AHRC), Casualty and Mortuary Affairs Operations Division related to the applicant's hip, knee and muscular pain and a muscle strain. AHRC stated: Unfortunately, AHRC is not able to provide an opinion as there is not enough medical information contained in this request to reach a preponderance of evidence nor any documentation to show a proximate cause. Furthermore, pain and strain are not medically considered conditions of lasting significance and pain alone is not typically a definitive diagnosis. This request does not reveal the type of order the Soldier was on when the alleged injury occurred which is a must since this is over four years old.

8. The AHRC advisory opinion was provided to the applicant and given the opportunity to provide additional evidence or comments. No response was received.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, 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, available military record, and the U.S. Army Human Resources Command advisory opinion, the Board concurred with the advising official finding insufficient evidence to render a proximate cause. The Board determined the applicant evidence does not show, and the applicant does not provide information pertaining to the injury, order status, or medical condition associated with the injury in order to make a complete decision on the facts and circumstances surrounding the applicant's request. Therefore, the Board denied relief.

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.



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

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Army Regulation 600-8-4 (Line of Duty 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. The Army LOD Program is a commander's program which essentially protects the interest of both the Soldier and the U.S. Government where service is interrupted by injury, illness, disease, or death. LOD investigations determine duty status at the time of incident and whether misconduct was involved and, if so, to what degree. Additionally, LOD investigations may be required to determine an existed prior to service condition, and, if so, determine service aggravation.

b. 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 more than 24 hours and:

(1) The injury, illness, or disease is of lasting significance (to be determined by a physician, physician assistant, or nurse practitioner).

(2) There is a likelihood that the injury, illness, or disease will result in a permanent disability.

(3) If a Reserve Component Soldier requires follow-on care for an injury, illness, or disease incurred during a period of active duty.

c. A formal LOD investigation is a detailed investigation that normally begins with a DA Form 2173 completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an 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.

d. 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.

3. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to ABCMR applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//