

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 January 2025

DOCKET NUMBER: AR20240003434

APPLICANT REQUESTS: retroactive placement on Title 10, U.S. Code, Section 12301(h) orders for the period 20 December 2020 to 15 February 2021.

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

- DD Form 149 (Application for Correction of Military Record)
- State of NC, Office of the Adjutant General, Orders 29-171-0065, Mobilization Orders, 20 June 2019
- Headquarters, U.S. Army Medical Command Orders MM-0260-00018, Retained on Active Duty Orders, 16 September 2020
- Two DA Forms 2173 (Statement of Medical Examination and Duty Status), 20 September 2020
- Two National Guard Bureau (NGB) Memoranda, subject: Line of Duty Determination [Applicant], 10 November 2020 and 15 December 2020
- NGB Orders NG-1047-00004, Orders to Active Duty, 16 February 2021
- ARNG Current Annual Statement, prepared 20 April 2023
- North Carolina Army National Guard (NCARNG) Orders 0006715666.00, Permanent Change of Assignment, 3 December 2023
- State of North Carolina, Department of Public Safety, Joint Force Headquarters, North Carolina National Guard Memorandum, subject: Request to Expedite Army Board for Correction of Military Records (ABCMR) in the Restoration of Medical Benefits, Pay and Allowances, 26 February 2024
- Department of the Army Mobilization Processing System (DAMPS) Audit Screen

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 his gap in orders represent breaks in medical coverage which never should have been triggered to start up less gap in continuity of orders. He was not paid, did not accrue leave or have accurately sponsored benefits from 20 December

2020 to 15 February 2021 due to a gap in between Medical Retention Program (MRP) and Reserve Component Managed Care – Mobilization (RCMC-M) orders as a wounded warrior. His last release from active duty DD Form 214 (Certificate of Release or Discharge from Active Duty) from oversea service will need a DD Form 215 (Correction to DD Form 215) if/depending on relief granted. He is missing a minimum of 1.93 months (58 days) of what should have been continuous active duty, 12301(h) active duty recovery status. He is currently serving as a traditional M-day Soldier.

3. Having enlisted in the ARNG and served earlier periods of active duty service, the applicant entered active duty in support of Operation Enduring Freedom on 12 August 2019.

4. Headquarters, U.S. Army Medical Command Orders MM-0260-00018, dated 16 September 2020, retained the applicant on active duty under the provision of Section 12301(h), Title 10, U.S. Code for the period 21 September 2020 to 19 November 2020 (60 days) to participate in Reserve Component Warriors in Transition MRP Program for completion of medical evaluation (Initial).

5. The applicant provides two Statements of Medical Examination and Duty Status, dated 20 September 2020, which show, in pertinent part, worsening pain and bulge on left without particular inciting event and reports of joint separation and more frequent pain and crepitus.

6. The applicant provides two memoranda from the NGB, dated 10 November 2020 and 15 December 2020, which approved the applicant's "in line of duty" DA Form 2173 for unilateral inguinal hernia and right shoulder impingement syndrome that occurred during Operation Enduring Freedom in line of duty – existed prior to service – service aggravation.

7. The applicant was ordered to active duty on 16 February 2021 under the provision of section 12301(h), Title 10, U.S. Code until 16 May 2021 (90 days) to participate in the Reserve Component RCMC-M.

8. The applicant provides a memorandum from the North Carolina Adjutant General requesting to expedite this action in the restoration of medical benefits, pay, and allowances for service members of the NCARNG who mobilized with the 30th Armored Brigade Combat Team in support of Operation Enduring Freedom (Spartan Shield).

a. Upon release from active duty, several service members experienced a break in service in their active duty orders, which resulted in a lapse of medical care and suspension of pay and allowances. This created severe hardship and duress to the service members and their families, due to incurring out of pocket costs for medical

care, coupled with loss of pay and benefits. In some cases, medical care was not provided at all.

b. This organization has been diligently trying to rectify this situation and the hardship that has been placed upon our service members and their families for several years but has yet to receive any determination to their requests. In accordance with Title 10 U.S. Code, 12301(h), Reserve Component Soldiers activated in time of war or national emergency and placed in an active status are to receive authorized medical care; to be medically evaluated for disability or other purposes; or complete a required DoD health care study, which may include an associated medical evaluation of the member.

9. The applicant provides a DAMPS audit screen, which shows his service dates and orders.

10. An advisory opinion was received from the NGB in the processing of this case. On 15 January 2025, the Chief, Special Actions Branch recommended approval of the applicant's request.

a. The applicant was mobilized with the 30th Armored Combat Brigade Team in support of Operation Enduring Freedom on 12 August 2019. The applicant sustained an in line of duty injury while deployed. He was placed on 12301(h) orders due to the line of duty on 21 September 2020. Upon returning from mobilization, he had a break in orders and therefore is requesting bridging orders from 20 December 2020 through 15 February 2021 so that he can continue to receive medical care for his in line of duty injury.

b. The applicant should have been retained on medical orders until he was return to duty eligible or completed the DES process. The NCARNG cites that impacted Soldiers that were injured in the line of duty while deployed in support of Operation Enduring Freedom, to receive care for those injuries they were retained on active duty under the provisions of Title 10, U.S. Code 12301(h). Due to the administrative shortfalls, processing delays, gaps in regulatory guidance and processing, impacted Soldiers were not retained on such duty until reaching the medical decision point or returned to duty. Packet approval through the NGB was cumbersome.

c. It is the recommendation of their office that the applicant's request be approved. He should be on continuous Title 10 orders from 12 August 2019 to 16 August 2021 2021 and his DD Form 214 should be updated.

11. On 22 January 2025, the applicant was provided with a copy of the advisory opinion for review and/or comment.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendation outlined in the NGB advisory opinion and the lack of any rebuttal of those findings and recommendation submitted by the applicant, the Board concluded there was sufficient evidence to support correction of the applicant's record to show retroactive placement on Title 10, U.S. Code, Section 12301(h) orders for the period 20 December 2020 to 15 February 2021.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:XXX :XXX :XXX 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 Order MM-0260-00018, Headquarters, U.S. Army Medical Command, dated 16 September 2020, to show end date as 15 February 2021
- entitlement to back pay and allowances as a result of this correction
- correction of his NGB Form 23A with applicable time
- amendment of his DD Form 214, for the period ending 19 December 2020 to show in:
 - item 12b: 15 February 2021
 - item 12c: 1 year, 6 months, and 4 days

//SIGNED//

X

CHAIRPERSON

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

REFERENCES:

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

2. Army Regulation 635-40 (Disability Evaluation for Retention, Retirement or Separation), provides policy and responsibilities for the disability evaluation and disposition of Soldiers who may be unfit to perform their military duties due to physical disability. Chapter 4 (Disability Evaluation System) provides that a Soldier may not be discharged or released from active duty because of a disability until they have made a claim for compensation, pension, or hospitalization with the Veterans Affairs or have signed a statement that their right to make such a claim has been explained or have refused to sign such a statement.

a. Paragraph 4-2a(3) provides that Reserve Component (RC) Soldiers on active duty orders specifying a period of more than 30 days will, with their consent, be kept on active duty for disability evaluation processing until final disposition, subject to the circumstances set forth in paragraph 4-2a(2). The original orders issuing authority is responsible for funding and coordinating with the Army Medical Command (MEDCOM) to generate a 12301(h) order extending the RC Soldier on active duty to complete the IDES process.

b. Paragraph 4-2a(2) provides that RC Soldiers, who were called to active duty under the provisions of Title 10, USC, section 12301 but then released from active duty by the 30th day due to the identification of a pre-existing condition not aggravated by the current tour of active duty, and which fails retention standards, will come under the applicable DES process based on whether the pre-existing condition was previously incurred in the LOD (duty-related process) or was a condition incurred when not in a duty status (non-duty-related process).

3. Title 10, USC, section 12301(h) (Reserve Components – General) provides that when authorized by the Secretary of Defense, the Secretary of a military department may, with the consent of the member, order a member of a RC to active duty to receive authorized medical care or to be medically evaluated for disability.

a. A member ordered to active duty under this subsection may, with the member's consent, be retained on active duty, if the Secretary concerned considers it appropriate, for medical treatment for a condition associated with the study or evaluation, if that treatment of the member is otherwise authorized by law.

b. A member of the Army National Guard of the United States or the Air National Guard of the United States may be ordered to active duty under this subsection only with the consent of the Governor or other appropriate authority of the State concerned.

//NOTHING FOLLOWS//