

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240004749

APPLICANT REQUESTS: in effect, retroactive placement on Title 10 U.S. Code, Section 12301(h) orders from the period 30 March 2021 until 22 March 2023.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Orders NG-9037-00004
- NGB Orders NG-9277-00009, with amendment
- State of North Carolina Orders 29-349-0008, 29-1122-00001, 29-162-0028, 29-159-0034, 29-1208-00004, 29-1257-00005, 29-274-0126, 29-1293-00077, and 29-2271-00001
- Headquarters, U.S. Army Medical Command Orders MM-0363-00004 and MM-0364-00007, and MM-2215-00001, with amendment
- Two DD Forms 214 (Certificate of Release or Discharge from Active Duty), for the period ending 29 March 2021 and 22 March 2023
- NGB, Army National Guard (ARNG) Orders NG-1342-00008, with amendment
- Line of Duty Packet
- NCARNG Orders 0004580013.00
- NGB Form 23A (ARNG Current Annual Statement)
- State of North Carolina, Department of Public Safety, Joint Force Headquarters Memorandum, subject: Request to Expedite Army Board for Correction of Military Records (ABCMR) in the Restoration of Medical Benefits, Pay and Allowances
- Department of the Army Mobilization Processing System (DAMPS) Audit Summary
- Department of Defense Instruction Number 1241.01 (Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements)

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 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 he was not paid, did not accrue leave or have accurately sponsored medical benefits from 30 March 2021 to 25 April 2021, 25 June 2021, 24 September 2021 to 30 September 2021, and from 28 May 2022 to 31 May 2022 between 2020 and 2022, Medical Retention Program (MRP) order as a wounded warrior. His release from active duty DD Forms 214 from 16 April 2021 and 18 April 2023 are both potentially incorrect depending on the level of relief granted. He is potentially missing 1.3 months (39 days) or maximum 9.2 months (237 days) of what should have been continuous active duty orders. He is currently medically involuntarily separated from the NCARNG and retired on the Permanent Disability Retired List (PDRL). If corrected, he would have one continuous Title 10 DD Form 214 with an end date of 22 March 2023 fixed via DD Form 215 (Correction to DD Form 215).
3. The applicant provides his active duty orders and amendment orders, which show a summary of all of his orders to active duty.
4. The applicant entered active duty in support of Operation Enduring Freedom (Trans Sahara) on 11 February 2019.
5. The applicant also provides his line of duty packet, which shows his line of duty determination was in line of duty as he was mobilized on Title 10 orders on 3 January 2020 for 365 days. He was deployed to Niamey, Niger, and N'djamena, Chad during the course of his deployment in support of Operation Enduring Freedom (Trans Sahara).
 - a. The investigation revealed [Applicant] was on duty at the time of the incident.
 - b. [Applicant] was conducting physical fitness training at the gym in Niamey, Niger on 21 October 2020.
 - c. [Applicant] began performing shoulder exercises within his range of motion. Upon experiencing an issue which resulted in a tingling sensation, he sought care.
 - d. Medical documentation on 21 October 2021 indicates his left shoulder movement was painful and weak.
 - e. [Applicant] was instructed to seek medical care for left shoulder upon returning to the continental United States.
 - f. No evidence exists of misconduct or negligence.
 - g. Recommendation. Based upon the medical documents and sworn statements from other Soldiers, it was recommended the determination for this line of duty investigation be in line of duty.

- h. The legal review determined the line of duty investigation was legally sufficient.
6. The applicant was honorably released from active duty for completion of required active service on 29 March 2021.
7. The applicant's orders reflect he served on active duty for the following periods:
- 26 April 2021 to 9 June 2021
 - 10 June 2021 to 24 June 2021
 - 26 June 2021 to 10 July 2021
 - 11 July 2021 to 24 August 2021
 - 25 August 2021 to 23 September 2021
 - 1 October 2021 to 15 October 2021
8. The applicant entered active duty on 12301(h) orders on 1 November 2021.
9. On 22 March 2023, he was honorably retired for permanent disability. His DD Form 214 shows he completed 1 year, 4 months, and 22 days of active service.
10. On 27 April 2023, the NCARNG published order 0004580013.00 placing the applicant on the PDRL with an effective date of 23 March 2023.
11. The applicant provides:
- a. His current annual statement, which shows a summary of his retirement points and, in pertinent part, 29 years of creditable service for retired pay.
 - b. Memorandum, subject: Request to Expedite ABCMR in the Restoration of Medical Benefits, Pay and Allowances from the NCARNG Adjutant General.
- (1) 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.
- (2) 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.

c. A DAMPS audit screen, which shows his service dates and orders.

12. An advisory opinion was received from the NGB in the processing of this case. On 13 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 3 January 2020. He was placed on 12301(h) orders due to the line of duty on 30 December 2020 once returning from mobilization. He had a break in orders and was on a series of annual training and 502(f) special project orders with breaks occurring until he was placed on the PDRL effective 23 March 2023. He is requesting continuous active duty orders from redeployment, 30 December 2020 until 30 March 2023.

b. DODI 5124.05 Reserve Component (RC) Line of Duty Determination for Medical and Dental Treatments and Incapacitation Pay Entitlements program states that RC Soldiers who are on active-duty orders, in support of contingency will, with Soldier's consent, be retained on active duty for authorized medical treatment or evaluation.

c. HQDA EXORD 048-20 (Warrior Care and Transition Program Restructure) required the restructuring of the Warrior Care and Transition (WCT) Program to implement efficiencies and improvement of care for all wounded, ill, and injured Soldiers. The order directed that no later than 1 October 2020, the Army implements WCT Program restructure and reform measures to optimize the organization while remaining the program for the healing and transition of wounded, ill and injured Soldiers. Key tasks included implementing single entry criteria and establish remote management options to ensure medical case management for non-complex RC Soldiers.

d. Soldiers were retained on active duty in order to receive authorized medical care. That order should have been unbroken until the applicant was transitioned into the Disability Evaluation System (DES) or returned to duty.

e. Poor administrative processes, gaps in available programs, and a lethargic NGB were incapable of maintaining the orders required by law and Army regulations.

f. The final order should have been extended to encompass transition leave in accordance with the regulation and its intent to establish equitable treatment across all components of the Army.

g. It is their recommendation that Soldiers of the 30th ABCT have orders amended to reflect continuous service from the end of the mobilization order through the date they were determined to be returned to duty, plus additional time for transition leave. That all separation documents and pay be corrected to reflect the changes in service time.

13. On 24 January 2025, the applicant was provided with a copy of the advisory opinion for review and/or comment.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations outlined in the NGB advisory opinion, the Board concluded there was sufficient evidence of an error or injustice warranting a change to the applicant's record as requested.

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:

- voiding the applicant's DD Form 214 for the period ending 22 March 2023
- amending Orders Number MM-0363-00004, Headquarters U.S. Army Medical Command, dated 28 December 2020, to show 30 December 2009 through 22 March 2023
- voiding Order MM-0364-00007, Headquarters, U.S. Army Medical Command, dated 29 December 2020
- 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 29 March 2021 to show in:
 - item 12b: 23 March 2023
 - item 12c: 4 years, 1 month, and 13 days

X //SIGNED//

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//