

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 July 2024

DOCKET NUMBER: AR20240006782

APPLICANT REQUESTS:

- correction of U.S. Army Medical Command Orders MM-3341-00001, dated 7 December 2023 to show report date as 28 April 2022 vice 6 December 2023
- associated backpay and entitlements
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record), 10 May 2024
- Counsel Brief
- Military Entrance Processing Station Orders 1153013, 15 May 2021
- Immunization Record
- Timeline and Summary of Events
- U.S. Army Human Resources Command (HRC) Memorandum, subject: Line of Duty (LOD) Determination [Applicant], 17 October 2023
- U.S. Army Installation Management Command (IMCOM) Order 042-098, 11 February 2022 and IMCOM Order 042-096, 11 February 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 27 April 2022
- U.S. Army Medical Command Orders MM-3341-00001, 7 December 2023
- U.S. Army Medical Command Orders MM-4010-0007, 10 January 2024
- E-mail Correspondence, re: Applicant's Continuation Active Duty to the Secretary of Defense, Chief of National Guard Bureau, National Guard Judge Advocate, and the Chief of Staff of the Army
- Army Board for Correction of Military Records (ABCMR) Record of Proceedings for Docket Number AR20210009764
- Two Board for Correction of Naval Records Record of Proceedings for Docket Numbers BC-2022-03094 and BC-2022-00425

FACTS:

1. The applicant, through counsel, states her records should be corrected to reflect she remained on active duty orders under 10 U.S. Code 12301(h) from 28 April 2022 through 6 December 2023, due to her ongoing need for medical care related to conditions incurred in the LOD.

a. The applicant received the COVID-19 vaccination on 20 March 2021 and 17 April 2021. She was ordered to initial active duty for training (IADT) on 15 May 2021 with a report date of 2 June 2021. The applicant provides a summary of events outlining her sick call visits for progression of symptoms, appointments, and context of incident with a drill sergeant in formation that led to her using the open door policy. In pertinent part, some of the medical encounters described the LOD process and discussions related to the medical evaluation board (MEB) process (See Applicant Statement).

b. The applicant incurred a potentially unfitting medical condition while on active duty orders for more than 30 days. The LOD memorandum issued 2 years after the incurred injury acknowledges the injury was incurred in LOD and the LOD was not processed at that time. Her condition had not stabilized at the time she was released from active duty.

c. Federal law authorizes an injured Soldier to remain on active duty orders to obtain medical care and treatment through the completion of the disability evaluation system (DES) should the condition not improve enough that the Soldier can be returned to duty. Historically, the Army and Air Force BCMR have granted requests to similarly situated service members like the applicant.

d. The applicant's leadership failed her by failing to process her LOD determination multiple times during her course of treatment and training, specifically, the applicant notes she was informed a LOD would be accomplished for her on 13 October 2021.

e. In April 2022, the applicant was led to believe she was being discharged for medical reasons and that her time on active duty orders may be extended through the discharge process. She acknowledges she was informed that if she did not hear anything before graduation that she would just be going home. The applicant was unaware of the consequences of not receiving an LOD or continued orders at the time.

f. Had an LOD determination been processed appropriately and in accordance with the governing laws and regulations, the applicant would have had an official in LOD finding prior to October 2023 for an October 2021 injury authorizing her continued orders on active duty for treatment and DES processing.

2. The applicant, through counsel, provides:

a. Her immunization record, which shows, in pertinent part, she received the COVID vaccine on 20 March 2021 and 17 April 2021.

b. HRC Memorandum, subject: LOD Determination, [Applicant], dated 17 October 2023, (see sub-paragraph 3j, below).

c. E-mail correspondence from an advocate from the USJAG organization to several officials, including, but not limited to, the Secretary of Defense, Chief of National Guard Bureau, National Guard Judge Advocate, and the Chief of Staff of the Army, relating to the applicant's request.

d. ABCMR Record of Proceedings for Docket Number AR20210009764, in which, an applicant requested continuation orders to remain on active duty while undergoing a MEB/PEB, payment of applicable pay and allowances, and accrual of ordinary leave. The Board granted relief to this applicant finding evidence to support that the ARNG did not timely facilitate his case and that it was through no fault of his own.

e. Naval BCNR Record of Proceedings for Docket Number BC-2022-03094, in which, an applicant requested medical continuation orders. The board granted partial relief for orders.

f. Naval BCNR Record of Proceedings for Docket Number BC-2022-00425, in which, an applicant requested medical continuation orders. The board granted relief.

g. The following documents, summarized in the applicant's service record:

- Military Entrance Processing Station Orders 1153013, 15 May 2021
- U.S. Army Installation Management Command (IMCOM) Order 042-098, 11 February 2022
- IMCOM Order 042-096, dated 11 February 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 27 April 2022
- U.S. Army Medical Command Orders MM-3341-00001, 7 December 2023
- U.S. Army Medical Command Orders MM-4010-0007, 10 January 2024

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

a. She enlisted in the VAARNG on 1 February 2021 for 8 years. She was assigned to Headquarters and Headquarters Battalion, 429th Support Battalion, Danville, VA.

b. Military Entrance Processing Station Orders 1153013, dated 15 May 2021 ordered the applicant to IADT with a report date of 2 June 2021, with the consent of the State Governor. She entered active duty on 2 June 2021. Her order stated:

- she would report to Fort Leonard Wood, MO on 2 June 2021 for basic combat training, for approximately 10 weeks
- she would report to the U.S. Army Intelligence Center at Fort Huachuca, AZ, on 16 August 2021, for advanced individual training in military occupational specialty (MOS) 35F, Intelligence Analyst

c. IMCOM Order 042-098, dated 11 February 2022 released the applicant from attachment to the U.S. Army Intelligence Center, Fort Huachuca, and ordered the applicant further attached to Fort Lee, VA, to attend MOS 92A, Automated Logistical Specialist Course with a report date of 11 February 2022.

d. IMCOM Order 042-096, dated 11 February 2022 revoked Order 347-078 pertaining to the applicant's military occupational specialty (MOS) order, dated 13 December 2021.

e. She completed training for award of MOS 92A, and she was honorably released from active duty on 27 April 2022 in accordance with chapter 4 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) for the completion of required active service. Her DD Form 214 shows she completed 10 months and 26 days of active duty.

f. Following her release from active duty, she was transferred back to the ARNG, assigned to Headquarters, 429th Support Battalion, Danville, VA.

g. On 5 June 2022, Joint Forces Headquarters, VAARNG published Orders reassigning her to 229th Chemical Company, Rocky Mount, VA.

h. On 2 February 2023, VAARNG published orders promoting her to specialist (SPC)/E-4 effective 1 February 2023.

i. On 17 October 2023, HRC, by memorandum completed an LOD determination for the applicant finding her POTS is considered in LOD.

j. HRC Memorandum, subject: LOD Determination, [Applicant], dated 17 October 2023, which states:

(1) HRC received a request from the VAARNG for a request to initiate past 180 days. Evidence contained allows HRC to provide an LOD determination regarding the applicant's postural orthostatic tachycardia syndrome (POTS). Army Regulation (AR) 600-8-4 (line of Duty Policy, Procedures, and Investigations) shows under terms for preponderance of evidence that findings must be supported by a greater weight of evidence (more likely than not) than supports any different conclusion. After a thorough

review of the medical documents, the applicant's POTS is considered in LOD by the preponderance of the evidence in lieu of a LOD investigation.

(2) The applicant was on active duty orders from 2 June 2021 until 27 April 2022. Her condition of POTS was documented on 18 October 2021. The Soldier was attending advanced individual training (AIT) in Fort Huachuca, AZ and expressed that she had been having complication since receiving the second dose of Moderna COVID-19 vaccine. She suffered from continuation medical issues while in this active duty status and was treated by various components. The applicant was released from active duty without having an LOD completed or having her medical condition stabilized. Due to her medical condition, she has been without full-time employment due to the nature of her ailment since her release from active duty. In addition, while she has TRICARE Reserve Select and Blue Cross/Blue Shield through her mother's policy, she has paid approximately \$20,000 out of pocket for medical bills related to her condition and amassed over \$70,000 in additional unpaid medical bills.

(3) Research has confirmed a link between a COVID-19 infection and a debilitating heart condition called POTS that has been diagnosed in some patients. POTS was also linked, to a lesser degree, to COVID-19 vaccination with a mRNA vaccine, according to the new study. Researchers analyzed data on nearly 300,000 patients from 2020 to 2022 who had either received at least one dose of a COVID-19 vaccine or had a confirmed case of COVID-19. The vast majority of the vaccinated people in the study for an mRNA vaccine, either from Pfizer, BioNTech, or Moderna.

k. On 7 December 2023, Headquarters, U.S. Army Medical Command published Orders MM3341-0001 ordering the applicant to active duty under the provisions of Title 10 U.S. Code, section 12301 (H) to participate in Reserve Component DES related medical appointments. Her report date was 6 December 2023 for a period of 179 days, with an end date of 1 June 2024.

l. On 10 January 2024, Headquarters, U.S. Army Medical Command published Orders MM3341-0001A01 amending the applicant's orders to show her end date as 9 January 2024 and a tour length of 35 days.

m. On 10 January 2024, Headquarters, U.S. Army Medical Command published Orders MM4010-0007 retaining the applicant on active duty under the provisions of Title 10 U.S. Code, section 12301 (H) to complete MRP (Medical Retention processing). Her report date was 10 January 2024 for a period of 179 days, with an end date of 6 July 2024.

n. On 10 June 2024, Headquarters, U.S. Army Medical Command published Orders MM4010-0007A1 amending the applicant's orders to show her end date as 1 January 2025 and a tour length of 358 days.

o. The applicant is currently on active duty under the provisions of Title 10 U.S. Code, section 12301 (H). The applicant's NGB Form 23A (ARNG Current Annual Statement) shows she completed 3 qualifying years of service towards non-regular retirement.

4. By regulation, qualifying criteria for entry into the Reserve Component Managed Care program includes:

- the medical condition is incurred or aggravated in the LOD
- there is no need for evaluation, treatment, and/or disability evaluation processing while in an active duty status
- the condition requires definitive care; definitive care is defined as a specific treatment plan of greater than 30 days, which has been reviewed and validated by a military medical authority; the plan is expected to direct progress towards the medical retention determination point (MRDP) and either return the Soldier to duty or begin the DES process

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence of record shows the applicant was on active duty for training from 2 June 2021 to 27 April 2022. She incurred a potentially unfitting medical condition (POTS) while on active duty. While on active duty, the applicant reported that she had complication since receiving the second dose of Moderna COVID-19 vaccine. She suffered from continuation medical issues while in this active duty status and was treated by various components. Her condition had not stabilized at the time she was released from active duty. The applicant was released from active duty without having an LOD completed or having her medical condition stabilized. There was a delay in processing her LOD. The LOD memorandum issued nearly 2 years after the incurred injury acknowledges the injury was incurred in LOD and the LOD was not processed at that time.

b. It wasn't until 7 December 2023, when Headquarters, U.S. Army Medical Command published Orders ordering the applicant to active duty under the provisions of Title 10 U.S. Code, section 12301 (H) to participate in Reserve Component Medical Processing program related medical appointments. Her report date was 6 December

2023 for a period of 179 days, with an end date of 1 June 2024, which has since been amended multiple times.

c. The Board determined the delay in the LOD determination and the publication of orders placing her on active duty under 10 USC 12301(h) constitutes an injustice to the applicant. She should not be penalized for the delay. She should have been placed on active duty orders immediately following her release from ADT on 27 April 2022. Therefore, the Board determined relief is warranted.

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 records of the individual concerned be corrected by:

- amending Orders MM3341-0001, issued by Headquarters, U.S. Army Medical Command on 7 December 2023, to show the applicant was ordered to active duty under the provisions of Title 10 U.S. Code, section 12301 (H) to participate in Reserve Component DES related medical appointments with a report date of 28 April 202 vice 7 December 2023
- paying the applicant 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. 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.

d. Paragraph 2-2e (Medical and dental care for Soldiers on duty other than AD for a period of more than 30 days) states a Soldier of the National Guard or USAR is entitled to hospital benefits, pensions, and other compensation, similar to that for Soldiers of the Active Army for injury, illness, or disease incurred in LOD, under the following conditions prescribed by law (Title 10, USC, Section 1074a): (1) while performing AD for a period of 30 days or less; (2) while performing inactive duty training; (3) while performing service on funeral honors duty under 10 USC 12503 or 32 USC 115; (4) while traveling directly to or from the place at which that Soldier is to perform or has performed; (5) while remaining overnight immediately before the commencement of inactive duty training, or while remaining overnight, between successive periods of inactive duty training, at or in the vicinity of the site of the inactive duty training; or (6) while remaining overnight immediately before serving on funeral honors duty under 10 USC 12503 or 32 USC 115 at or in the vicinity of the place at which the soldier was to so serve, if the place is outside reasonable commuting distance from the soldier's residence.

2. Army Regulation 635-40 establishes the Army Disability Evaluation System and sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his office, grade, rank, or rating. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

a. Disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and who can no longer continue to reasonably perform because of a physical disability incurred or aggravated in military service.

b. Soldiers who sustain or aggravate physically-unfitting disabilities must meet the following line-of-duty criteria to be eligible to receive retirement and severance pay benefits:

(1) The disability must have been incurred or aggravated while the Soldier was entitled to basic pay or as the proximate cause of performing active duty or inactive duty training.

(2) The disability must not have resulted from the Soldier's intentional misconduct or willful neglect and must not have been incurred during a period of unauthorized absence.

c. The percentage assigned to a medical defect or condition is the disability rating. A rating is not assigned until the PEB determines the Soldier is physically unfit for duty. Ratings are assigned from the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD). The fact that a Soldier has a condition listed in the VASRD does not equate to a finding of physical unfitness. An unfitting, or ratable condition, is one which renders the Soldier unable to perform the duties of their office, grade, rank, or rating in such a way as to reasonably fulfill the purpose of their employment on active duty. There is no legal requirement in arriving at the rated degree of incapacity to rate a physical condition which is not in itself considered disqualifying for military service when a Soldier is found unfit because of another condition that is disqualifying. Only the unfitting conditions or defects and those which contribute to unfitness will be considered in arriving at the rated degree of incapacity warranting retirement or separation for disability.

d. Paragraph 5-11 (Presumption of sound condition for Soldiers on orders to active duty specifying a period of more than 30 days), states the PEB will presume Soldiers, including Reserve Component Soldiers and recalled retirees on continuous orders to active duty specifying a period of more than 30 days, entered their current period of

military service in sound condition when the disability was not noted at the time of the Soldier's entrance to the current period of active duty.

(1) The PEB may overcome this presumption if clear and unmistakable evidence demonstrates the disability existed before the Soldier's entrance on their current period of active duty and was not aggravated by their current period of military service. Absent such clear and unmistakable evidence, the PEB will conclude that the disability was incurred or aggravated during their current period of military service.

(2) The PEB must base a finding that the Soldier's condition was not incurred in or aggravated by their current period of military service on objective evidence in the record, as distinguished from personal opinion, speculation, or conjecture. When the evidence is unclear concerning whether the condition existed prior to their current period of military service or if the evidence is equivocal, the presumption of sound condition at entry to the current period of military service has not been rebutted, and the PEB will find the Soldier's condition was incurred in or aggravated by military service.

e. Paragraph 5-14 (Impairments incurred during prior service) states any medical condition incurred or aggravated during one period of active service or authorized training in any of the Armed Forces that recurs, is aggravated, or otherwise causes the Soldier to be unfit, should be considered incurred in the LOD, provided the origin or such impairment or its current state is not due to the Soldier's misconduct or willful negligence, or progressed to unfitness as the result of intervening events when the Soldier was not in a duty status.

//NOTHING FOLLOWS//