

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240007606

APPLICANT REQUESTS:

- correction of DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending on 30 November 2020 to reflect continuous service through 17 March 2021.
- published orders for the period 20 July 2020 until 17 March 2021
- 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)
- Orders 29-176-0101, dated 25 June 2019
- Orders 29-176-0101 (A1), dated 3 August 2019
- Orders 29-176-0101 (A2), dated 17 March 2020
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- Memorandum for Line of Duty (LOD) Status, dated 4 May 2020
- Orders 29-176-0101 (A3), dated 8 June 2020
- Orders 29-176-0101 (A4), dated 5 September 2020
- Orders 29-176-0101 (A5), dated 5 October 2020
- Orders MM-0198-00017, dated 16 July 2020
- Orders MM-0198-00017A01, dated 13 November 2020
- Orders Audit Excerpt
- DD Form 214, ending 30 November 2020
- Orders NG-1017-00002, dated 17 January 2021
- NGB Form 22 (National Guard Report of Separation and Record of Service)
- NGB Form 23A (Army National Guard Current Annual Statement)
- Orders 0006522901.00, dated 9 November 2023
- Memorandum for Request to Expedite ABCMR in the Restoration of Medical Benefits, Pay and Allowances, dated 26 February 2024
- DA Form 5016 (Retirement Accounting Statement), dated 18 April 2024
- Department of Defense Instruction (DoDI) 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 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 he was receiving medical care from an injury incurred while serving in support of Operation Enduring Freedom (Spartan Shield) from 1 December 2020 to 16 March 2021. Due to gaps in his orders, he did not receive pay, leave accrual, or benefits for this time period. He is missing a total of 1.57 months, or 47 days, of time which should have been continuous active duty with an end date of 17 March 2021. He further references ABCMR Docket Number AR20220011892, another Soldier with the Army National Guard (ARNG) with similar issues, complete with Board findings.
3. The applicant provides:
 - a. The below listed documents to be referenced in the service record:
 - Orders 29-176-0101, dated 25 June 2019
 - Orders 29-176-0101 (A2), dated 17 March 2020
 - Orders 29-176-0101 (A3), dated 8 June 2020
 - Orders 29-176-0101 (A4), dated 5 September 2020
 - Orders 29-176-0101 (A5), dated 5 October 2020
 - Orders MM-0198-00017, dated 16 July 2020
 - Orders MM-0198-00017A01, dated 13 November 2020
 - DD Form 214, ending 30 November 2020
 - Orders NG-1017-00002, dated 17 January 2021
 - NGB Form 22, dated 19 March 2023
 - b. Orders Audit Excerpt provides details of his active duty service from 12 August 2019 to 30 November 2020 and Reserve Component Medical Care between 17 January 2021 to 17 March 2021, a period of 47 days.
 - c. His NGB Form 23A, dated 20 March 2023 shows his periods of service from 20 March 2017 to 19 March 2023.
 - d. Orders 0006522901.00 dated 9 November 2023 directed the applicant's voluntary transfer from the NCARNG with an effective date of 19 March 2023.
 - e. Memorandum for Request to Expedite ABCMR in the Restoration of Medical Benefits, Pay and Allowances, dated 26 February 2024, wherein the NCARNG, Major General M-H- requests the ABCMR expedite 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). Upon Release from active duty, several Service Members experienced a break in service in their active duty orders. The break in service resulted in a lapse of medical care and suspension of pay and allowances creating 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.

f. A DA Form 5016, dated 18 April 2024 outlines service with the Army National Guard from 20 March 2017 to 19 March 2023 with transfer to the Inactive Ready Reserve effective 20 March 2023.

g. DoDI 1241.01 establishes policy, assign responsibility, establish objectives, and provide guidance for determining an entitlement to medical and dental treatment and pay and allowances for RC Service members with injury, illness, or disease incurred or aggravated in the line of duty (in-LOD).

4. A review of the applicant's service record shows:

a. He enlisted in the North Carolina Army National Guard (NCARNG) on 20 March 2017.

b. On 25 June 2019, he was ordered to active duty in support of Operation Enduring Freedom (Spartan Shield) for a period of 400 days by way of Orders Number 29-176-0101 with a report date of 12 August 2019.

c. DA Form 2173 dated 10 April 2020 shows he incurred a posteromedial meniscus tear injury to his left knee in the line of duty.

d. On 4 May 2020, the National Guard Bureau, Chief, Personnel Division approved the LOD status for a posteromedial meniscus tear injury to the applicant's left knee meniscus tear that occurred during Operation Enduring Freedom (Spartan Shield).

e. On 5 October 2020, Orders Number 29-176-0101 (A5) amended Orders Number 29-176-0101 for correction to his period of active duty to reflect 343 days.

f. On 16 July 2020, Orders Number MM-0198-00017 retained the applicant on active duty for participation in the Reserve Component warriors in transit medical retention processing program for completion of medical evaluation and treatment for a period of 60 days with a reporting date of 20 July 2020 through 17 September 2020.

g. On 13 November 2020, Orders Number MM-0198-00017A01 further amended Orders Number MM-0198-00017 for correction of his tour length to reflect 134 days ending on 30 November 2020.

h. On 30 November 2020, he was honorably released from active duty. DD Form 214 shows his period of service from 12 August 2019 to 30 November 2020 for a net active service period of 1 year, 3 months, and 19 days.

i. On 17 January 2021, Orders Number NB-1017-00002 was issued placing him on active duty for completion of medical care and treatment for a period of 60 days to end on 17 March 2021.

j. His NGB Form 22 shows honorable discharge from the NCARNG with a net service of 6 years.

5. On 27 January 2025, the National Guard Bureau, Chief, Special Actions Branch, rendered an advisory opinion in the processing of this case. He opined:

a. In accordance with Department of Defense Instruction (DoDI) 5124.05 and Title 10 U.S. Code 12301(h) the applicant should have been retained on medical orders until he was returned to duty eligible or completed the IDES process. The NCARNG cites that Soldiers that were injured in the line of duty while deployed in support of Operation Enduring Freedom (Spartan Shield), to receive care for those injuries, were retained on active duty under the provisions of title 10 U.S. Code 12301(h). Due to 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.

b. The applicant was returned to full duty on 17 March 2021. He did not receive continuous orders or benefits that he was entitled to and is requesting a continuous order and records to reflect this change. It is the recommendation of this office that the applicant's request be approved. He should be on continuous Title 10 orders from 20 July 2020 to 17 March 2021 In accordance with DoDI 5124.05 and title 10 U.S. Code 12301(h). His records should be updated to include his NGB 23A and DD214. The NCARNG concurred with this advisory opinion.

6. On 27 January 2025, the applicant was provided with a copy of the advisory opinion and afforded an opportunity to respond. As of 10 February 2025, he did not respond.

7. By regulation (AR 15-185), an applicant is not entitled to a hearing before the ABCMR. Hearings may be authorized by a panel of the ABCMR or by the Director of the ABCMR.

8. By regulation (R 635-8), the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. When separation is ordered, the separation approval documents must be present for transition processing to occur. Source documents, as listed below, must be present in a Soldier's record in order to complete the DD Form 214. Source documents will consist of:

- Service Member's Record Brief
- Separation approval documents
- Separation order
- Any other document authorized for filing in the Army Military Human Resources Record

9. By regulation (AR 600-8-105), orders are published to order individuals onto active duty or change the status of military personnel on active duty. Only the organization that published the original order may amend, rescind, or revoke the order. When there is no evidence of fraud or obvious error and the Soldier received actual or constructive delivery, orders discharging a Soldier from the service will not be revoked after the effective date of discharge unless the revocation is a written confirmation of verbal orders issued before the effective date of discharge. An order may be corrected by the organization that published the original order to show the true state of affairs existing at the time the original order was published. Orders may only be changed to reflect facts that existed when the original order was published.

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 warranting correcting the applicant's record as requested.

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 Orders Number MM 0198-00017, Headquarters U.S. Army Medical Command, dated 16 July 2020, to show 20 July 2020 through 17 March 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 30 November 2020 to show in:
 - item 12b: 17 March 2021
 - item 12c: 1 years, 7 months, and 6 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Army Regulation 635-8 (Separation Processing and Documents) provides that the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of REFRAD, retirement, or discharge. When separation is ordered, the separation approval documents must be present for transition processing to occur.

a. Source documents, as listed below, must be present in a Soldier's record in order to complete the DD Form 214. Source documents will consist of:

- Service Member's Record Brief
- Separation approval documents
- Separation order
- Any other document authorized for filing in the Army Military Human Resources Record

b. Item 12b (Separation Date This Period) will contain the Soldier's transition date. This date may not be the contractual date if the Soldier was separated early, voluntarily

extends, is extended to make up lost time, or is retained on active duty for the convenience of the Government.

4. Army Regulation 600-8-105 (Military Orders) provides that orders are published to order individuals onto active duty or change the status of military personnel on active duty. Only the organization that published the original order may amend, rescind, or revoke the order. When there is no evidence of fraud or obvious error and the Soldier received actual or constructive delivery, orders discharging a Soldier from the service will not be revoked after the effective date of discharge unless the revocation is a written confirmation of verbal orders issued before the effective date of discharge. An order may be corrected by the organization that published the original order to show the true

state of affairs existing at the time the original order was published. Orders may only be changed to reflect facts that existed when the original order was published.

//NOTHING FOLLOWS//