

IN THE CASE OF: ██████████

BOARD DATE: 3 April 2024

DOCKET NUMBER: AR20230008179

APPLICANT REQUESTS: in effect, reconsideration of her prior request for:

- correction of her active-duty dates resulting in entitlement to education benefits
- debt remission in the amount of \$6,831.78

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Orders 325-030, 21 November 2001
- Orders 087-059, 28 March 2002
- Orders 178-380, 27 June 2002
- Orders 071-332, 12 March 2003
- Orders 273-185, 30 September 2003
- Orders 356-025, 22 December 2005
- NGB Form 22 (Report of Separation and Record of Service)
- NGB Form 23A (Army National Guard (ARNG) Current Annual Statement)

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220003468 on 31 January 2023.

2. The applicant states she is requesting that her NGB Form 23A be updated to reflect the correct active duty dates. She incurred an educational debt because of the error and had her income taxes garnished causing a financial strain. She is told she still has an additional debt on her account and payment will be garnished. She is asking for a reconsideration of her prior denial with updated evidence provided. Her records are in error because the original orders that indicated she was on continuous active duty for about 3 years did not align with her NGB Form 23A. Her orders were amended to reflect the correct dates.

3. The applicant provides:

a. Orders 325-030, dated 21 November 2001, which ordered the applicant to active duty for special work (ADSW) for temporary duty (TDY) from 24 November 2001 to 1 December 2001 under Title 32 United States Code (USC) authority. Two amendments were published for the orders:

- Orders 087-059, dated 28 March 2002, amended the period to read 10 December 2001 to 29 June 2002 under Title 32 USC 505 authority
- Orders 178-380, dated 27 June 2002, amended the period from 10 December 2001 to 30 September 2002 under Title 32 USC 502(f) authority

b. Orders 071-332, dated 12 March 2003, amended Orders 273-078 dated 30 September 2002 to read 1 October 2002 to 30 September 2003 under authority Title 32 USC 502(f).

c. Orders 273-185, dated 30 September 2003, ordered the applicant to ADSW from 1 October 2003 to 28 March 2004 under Title 32 USC 502(f).

d. Orders 356-025, dated 22 December 2005, discharged the applicant from the ARNG with an effective date of 29 November 2005.

e. Her NGB Form 22 shows she served from 30 November 1999 through her discharge date of 29 November 2005.

f. An NGB Form 23A, dated 3 May 2023 lists the following periods of service:

- 30 November 1999 to 16 July 2000 – ARNG Unit Member (B1)
- 17 July 2000 to 9 November 2000 – ARNG Unit Member or Initial Entry Training (B7)
- 10 November 2000 to 29 November 2000 – B1
- 30 November 2000 to 21 March 2001 – B1
- 22 March 2001 to 29 June 2001 – B1
- 30 June 2001 to 29 November 2001 – B1
- 30 November 2001 to 29 November 2002 – B1
- 30 November 2002 to 30 September 2003 – B1
- 1 October 2003 to 29 November 2003 – ARNG Active Guard Reserve (AGR) under Title 32 USC, State Controlled and ARNG Active Duty Operational Support (ADOS) under Title 32 USC (B4)
- 30 November 2003 to 29 November 2004 – B4
- 30 November 2004 to 14 January 2005 – B4
- 15 January 2005 to 29 November 2005 – B1

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

- a. Her NGB Form 22 shows she enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) on 30 November 1999.
 - b. An NGB Form 23B (ARNG Retirement Points History Statement) dated 28 June 2002 shows the applicant's initial periods of service were listed as follows:
 - 30 November 1999 to 16 July 2000 – B1
 - 17 July 2000 to 9 November 2000 – B7
 - 10 November 2000 to 29 November 2000 – B1
 - 30 November 2000 to 21 March 2001 – B1
 - 22 March 2001 to 29 June 2001 – B1
 - 30 June 2001 to 29 November 2001 – B1
 - 30 November 2001 to (date not provided) – B1
 - c. The only available orders included in the applicant's service record:
 - Orders 273-185 dated 30 September 2003 – also provided by the applicant
 - Orders 015-020 dated 15 January 2004 – attached the applicant to the training site effective 25 November 2003 for administration, training, and pay
 - Orders 084-122 dated 24 March 2004 – ordered the applicant ADSW from 29 March 2004 to 23 September 2004 under Title 32 USC 502(f) authority
 - Orders 184-070 dated 2 July 2004 – ordered the applicant ADSW from 24 September 2004 to 30 September 2004 under Title 32 USC 502(f) authority
 - Orders 356-024 dated 22 December 2005 – also provided by the applicant
 - d. She was honorably discharged from the [REDACTED] ARNG on 29 November 2005. Her NGB Form 22 shows she completed 6 years of net service for the period. The applicant was transferred to the U.S. Army Reserve for completion of her statutory obligation. It also shows in Block 10c (Prior Active Federal Service): 00 00 00.
5. On 5 February 2024, the National Guard Bureau, Chief, Special Actions Branch, rendered an advisory opinion in the processing of this case. He opined:
- a. Title 38 USC, Section 3301 defines qualifying service for Post-9/11 GI Bill eligibility. Eligible qualifying service for the Reserve Components is service under a call or order to active duty under Title 10, Section 688, 12301(a), 12301(d), 12301(9), 12301(h), 12302, 12304, 12304a, or 12304b or Title 14, Section 712, or under Title 32, Section 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a declaration of national emergency (DNE).
 - b. The applicant provided copies of her orders to support her claim of Post-9/11 GI Bill eligibility, however, the periods of service she submitted do not meet the definition of

qualifying service. Her orders under Title 32, Section 505 are not listed as a qualifying period of service for the Post-9/11 GI Bill under Title 38, Section 3301 and her orders under Title 32, Section 502(f) were not authorized by the President or the Secretary of Defense for the purpose of responding to a DNE. In addition, per the Assistant Secretary of Defense for Manpower and Reserve Affairs memorandum dated January 13, 2016, the only service under Title 32, Section 502(f) that qualified for the Post-9/11 GI Bill during the time the applicant served was between September 11, 2001, and May 31, 2002, in response to Operation Noble Eagle.

c. Given the applicant's periods of service are not considered qualifying service for the Post-9/11 GI Bill, the office does not recommend relief.

6. On 9 February 2024, the advisory opinion was forwarded to the applicant for acknowledgment and/or response. The applicant provided the following previously submitted documents in her rebuttal:

- Orders 325-030, dated 21 November 2001
- Orders 087-059, dated 28 March 2002
- Orders 178-380, dated 27 June 2002
- Orders 071-332, dated 12 March 2003
- Orders 273-185, dated 30 September 2003

7. The applicant stated in her email dated 9 February 2024 she was unsure if the decision was made based on the updated military orders. She had been in touch [REDACTED] to inform him the dates of the orders were incorrect and she only received credit from October 2003 to December 2005. She provided orders from 2001 to 2005 and she was told he would look at them again to have them verified.

8. On 31 January 2023, the ABCMR rendered a decision in Docket Number AR20220003468.

a. The Board reviewed and agreed with the NGB's advisory official's finding that the applicant's eligibility for MGIB-SR educational assistance entitlement of a Service Member in the Selected Reserve expired on her separation date of 29 November 2005. As a result of her continued receipt of MGIB-SR benefit past her discharge date, a debt of \$6,411.77 was generated. The NGB was informed that the Department of Veterans Affairs (VA) had agreed to cancel Soldier's incurred debt on the grounds that it was caused by an administrative error.

b. As far as her request for Post 9/11 benefits however, the Board also agreed with the NGB that her active duty periods do not meet qualifying service requirements outlined in 38 USC, Section 3301.

9. By law, for the purpose of "active duty", members of the reserve components of the Armed Forces, service on "active duty" is under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(9), 12301(h), 12302, 12304, 12304a, or 12304b of title 10 or section 712[1] of title 14. In addition to the above, ARNG members full time service is under Title 32, Section 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and National Guard Bureau – Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for disapproval finding the applicant's periods of service submitted are not considered qualifying service for the post 9/11 GI Bill. The Board noted the applicant's debt has already been cancelled by veteran affairs. Additionally, the Board determined there is insufficient evidence to support the applicant's contentions for correction of her active-duty dates resulting in entitlement to education benefits. Therefore, the Board found reversal of the previous Board determination is without merit and denied relief.


BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
█	█	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20220003468 on 31 January 2023.

5/14/2024



 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. Army Regulation 621-202 (Army Educational Incentives and Entitlements) states:

a. Chapter 4 (Post 9/11 G.I. Bill) provides that for the purposes of this policy, the terms 'Armed Services' and 'Uniformed Services' do not include the IRR unless otherwise noted. The OVA is responsible for determining eligibility for education benefits under the Post-9/11 G.I. Bill. Generally, to be eligible for the Post-9/11 G.I. Bill, Soldiers must serve on Active Duty (AD) in Regular status or on AD on specific Title 10 or Title 32 orders on or after 11 September 2001, for at least 30 continuous days with a discharge due to a service-connected disability, or an aggregate period ranging from 90

days to 36 months or more. Specific eligibility criteria are listed in Title 38 USC Section 3301. Periods of active duty that are not qualifying service for the purpose of establishing eligibility for the Post 9/11 G.I. Bill include a period of SELRES service used to establish eligibility under 10 USC Chapter 1606 (Montgomery G.I. Bill Selected Reserve (MGIB-SR) or under 10 USC 1607(Reserve Education Program (REAP)).

b. Chapter 3 (Montgomery G.I. Bill Selected Reserve (MGIB-SR), Montgomery G.I. Bill - Selected Reserve Kicker and Reserve Education Program (REAP)) provides that the MGIB-SR is an education program that provides up to 36 months of benefits to members of the Selected Reserve (SELRES). This includes the Army, Navy, Air Force, Marine Corps, and Coast Guard Reserves, as well as the ARNG and the Air National Guard. An eligible Reservist may receive education benefits while in a program approved for OVA education and training. A Soldier is eligible for educational assistance under the MGIB-SR after he/she enlists, reenlists, or extends an enlistment as a Reserve of the Army for service in the SELRES after 30 June 1985, and signs at least a 6-year obligation to serve in the SELRES.

3. Title 38 United States Code, Section 3301 (Definitions) provides that for the purpose of "active duty", members of the reserve components of the Armed Forces, service on "active duty" is under a call or order to active duty under section 688, 12301(a), 12301(d), 12301(9), 12301(h), 12302, 12304, 12304a, or 12304b of title 10 or section 712 [1] of title 14. In addition to the above, ARNG members full time service is under Title 32, Section 502(f) when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

4. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//