

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230009146

APPLICANT REQUESTS: remission or cancellation of an out-of-service debt.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 4247636, 20 March 2023

FACTS:

1. The applicant states in pertinent part that she was medically discharged from the U.S. Army Reserve (USAR), effective 3 February 2023. However, her discharge orders were not issued until the beginning of March 2023. Since she had not received orders yet, she continued to attend her scheduled Battle Assembly (BA) until 27 March 2023. She was advised to not attend the April BA and on 5 May 2023, she received confirmation of her discharge. She contests that she was unaware of the discharge order and attended her February and March BA in good faith. The recoupment of funds for duty performed is unjust.

2. A review of the applicant's available service records reflects the following:

a. On 5 March 2020, the applicant enlisted in the USAR to serve as an 88M (Motor Transport Operator) for 8 years.

b. On 14 May 2021, Headquarters, U.S. Army Garrison, Fort Leonard Wood, issued Orders Number 134-2387 announcing the award of the 88M military occupational specialty, effective 19 May 2021.

c. On 20 March 2023, the U.S. Army Human Resources Command issued Orders Number 4247636 announcing the applicant's separation from military service effective 3 February 2023, due to her failure to meet medical/physical/procurement standards (Separation Program Designator (SPD) Code "JFW").

3. On 23 January 2024, the Defense Finance and Accounting Service advised that the debt being recouped from the applicant pertained to her performance of duty from 24-28 February 2023 and 13-21 March 2023, despite being discharged on 3 February 2023. The original debt amount was \$701.76, of which the applicant has made zero payments towards. The debt has been referred to a private collection agency with a current balance of \$721.26 including additionally assessed fees.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows HRC issued orders on 20 March 2023, separating the applicant from military service effective 3 February 2023, due to her failure to meet medical or physical/procurement standards. The applicant was no longer authorized to perform drills after separation. The Board agreed with DFAS that the applicant's debt resulted from performance of duty from 24-28 February 2023 and 13-21 March 2023, despite being discharged on 3 February 2023, resulting in the debt. Since the debt was incurred while not on active duty or in an active status, the Board cannot legally waive this debt.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

█ █ █ DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 for correction of the records of the individual concerned.2.

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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 (AR) 135-178 (Enlisted Administrative Separations), Chapter 2-17 (Notification of Discharge) provides that notice of discharge may be either actual (order or certificate) or constructive, when actual delivery of the discharge order cannot be accomplished due to the absence of the Soldier to be discharged. If the Soldier is assigned to a Selected Reserve unit or duty position, receipt of the order directing his or her discharge by the Soldier's organization at the proper station of the organization will be sufficient notice. The date of receipt of the order by the Soldier's organization and the reason actual notice was not given will be entered by endorsement on the back of the discharge order. A confirmed copy of the annotated discharge order will be sent by registered or certified mail to the Soldier at the most recent address provided by the Soldier for that purpose.

2. AR 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. A Soldier indebted to the U.S. Government may request that the debt be remitted or canceled on the basis of hardship, injustice, or both.

a. Paragraph 1-6 (Indebtedness to the Army that May be Remitted or Cancelled under Title 10, USC, section 4837) provides that a Soldier's debts to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from:

- Payments made in error to a Soldier
- Payments made in excess of an allowance on behalf of a Soldier
- Debts incurred while serving on active duty or in an active status as a Soldier
- Debts acknowledged as valid
- Debts for which an appeal has been denied
- Debts for which a waiver has been denied
- Debts established as a result of financial liability of investigation of property loss

b. Paragraph 1-12 (Determining injustice or Hardship) provides that the following standards in this regulation will be used to determine injustice or hardship based on the information received. The following factors will be considered:

- the Army's policy in the area of indebtedness to the Army (for example, excess leave or basic allowance for housing while living in Government housing)
- the Soldier's awareness of policy and procedures; past or present military occupational specialty, rank, years of service, and prior experience are taken into consideration
- the Soldier's monthly income and expenses
- the Soldier's contribution to the indebtedness to the Army by not having the situation corrected
- additional income or assets (for example, spouse's salary, savings account, and bonds)

c. Paragraph 1-13 (Additional Factors for Consideration in Determining Injustice) provides that the application packet must contain evidence that either: the applicant did not know, and could not have known, of the error; or the applicant inquired of a proper authority and was told that the payment was correct

//NOTHING FOLLOWS//