

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 January 2025

DOCKET NUMBER: AR20230011220

APPLICANT REQUESTS:

- In effect, correction of her U.S. Army Reserve (USAR) separation orders to show her 22 March 1994 honorable discharge was from the U.S. Army Selected Reserve, vice U.S. Army Control Group (Annual Training)
- Correction of her DA Form 5016 (Chronological Statement of Retirement Points) to reflect the award of at least one point per year from 1988 to 1994

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

- DD Form 149 (Application for Correction of Military Record)
- Exhibit 1 – Applicant's Self-Authored Statement
- Exhibit 2 – USAR Personnel Center (ARPERCEN) Orders
- Exhibit 3 – DD Form 1966 (Record of Military Processing – Armed Forces of the United States)
- Exhibit 4 – Department of Veterans Affairs (VA) Veterans Benefits Management System (VBMS) Compensation and Pension (C&P) Award Print
- Exhibit 5 – VA Form 21-4138 (Statement in Support of Claim)
- Exhibit 6 – Military Personnel Record Documents
- Exhibit 7 – VA Letter regarding Certificate of Eligibility (COE) for VA Home Loan Benefit
- Exhibit 8 – DA Form 5016
- Exhibit 9 – VA C&P Examination – Initial Post-Traumatic Stress Disorder (PTSD) Disability Benefits Questionnaire (DBQ)
- Exhibit 10 – VA Rating Decision (09/08/2020)
- Exhibit 11 – Application of Increase in VA Compensation due to Unemployability
- Exhibit 12 – Review PTSD DBQ
- Exhibit 13 – VA Rating Decision (03/05/2021)
- Exhibit 14 – Medical Treatment Record – Non-Governmental Facility (July 2020)
- Exhibit 15 – Medical Treatment Record – Non-Governmental Facility (November 2020)
- Exhibit 16 – "Kurta Memorandum"

- Exhibit 17 – VA Form 21-0781a (Statement in Support of Claim for Service Connection for PTSD Secondary to Personal Assault)
- Exhibit 18 – Extract, Army Regulation (AR) 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records) from Reserve Components Personnel Update Number 19

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, in effect, she has been trying, unsuccessfully, to obtain a COE; by granting her requests, the Board will enable her to meet the VA's COE criteria. (According to the VA's Guaranteed Loan Processing Manual, COE eligibility requirements include the honorable completion of at least 6 years of creditable service; time spent in and an honorable discharge from the Individual Ready Reserve (IRR) does not count. For VA purposes, a creditable year consists of at least one retirement point per year, in addition to the 15 points granted for USAR membership).
 - a. The applicant discloses that in July 1986, while undergoing basic combat training (BCT), she incurred PTSD because one of her drill sergeants sexually assaulted her; after this, she felt fearful and uncomfortable around men, and she was scared of being raped again.

 - b. The applicant's fears ultimately led to her inability to attend her USAR Troop Program Unit's (TPU) training assemblies; due to her absences, her TPU transferred her to the IRR as an unsatisfactory participant. The applicant argues that, were it not for the sexual trauma she experienced, and the resultant PTSD, she would have attended her TPU's training assemblies and completed her service obligation.

3. Counsel states:
 - a. The Board should grant the applicant's requests based on the following:
 - The Army unjustly transferred the applicant to the IRR, in that her undiagnosed PTSD, caused by the sexual assault, led to her absence from training
 - The applicant's USAR service was otherwise laudable, and this further bolsters the applicant's request that she would have earned to required number of retirement points if not for her PTSD

- The applicant's "post-service conduct renders her transfer and consequential lack of opportunity to receive points unreasonably harsh"
- Were present policies in effect during the applicant's era of service, she likely would have received the treatment she required for her PTSD and would not have been transferred to the IRR

b. After summarizing the applicant's military service and describing the trauma the applicant endured, counsel notes the applicant's return to civilian life was filled with challenges "due to triggering experiences and constantly having to relive her sexual assault." She has lost numerous hours of work because her PTSD symptoms overwhelmed her, and she has had difficulty in maintaining employment. The applicant subsequently sought treatment at the VA, and, in 2019, the VA officially diagnosed the applicant with PTSD due to military sexual trauma (MST).

c. Counsel argues, "Under the 'Kurta Memo,' discharge relief claims should be granted liberal consideration when based on underlying mental health conditions and sexual assault, both of which are implicated here. Currently, [applicant's] character of service from the U.S. Army Selected Reserve is uncharacterized. She transferred to the IRR in 1988 and was honorably discharge from (the IRR) rather than the Selected Reserve. Her current request is for her whole service, from 1986 until 1994, to be treated as if she had not experienced MST and PTSD and had stayed in the Selected Reserve and to upgrade her discharge from the Selected Reserve from uncharacterized, as it stands now, to honorable."

d. Counsel additionally contends that the applicant meets all criteria outlined in the "Kurta Memo."

- Applicant had a condition and experiences that mitigate or excuse her discharge from the Selected Reserve
- The applicant's condition existed during her military service
- The applicant's conditions and experiences excuse or mitigate her discharge from the Selected Reserve
- The applicant's MST and PTSD outweigh her absence from unit training assemblies

e. Counsel asserts the applicant's otherwise laudable military service renders her transfer to the IRR unjust; in support, counsel points out that, for the period prior her absences, the applicant's service record is devoid of any derogatory information. During her tenure in the IRR, the applicant continued to maintain a good record.

4. The applicant provides documents from her service record; from the VA, reflecting her PTSD diagnosis; an extract from AR 140-185; and a copy of the "Kurta Memo." In addition to the foregoing documents, the applicant offers the following:

a. Applicant's self-authored statement offers details of her sexual assault and the perpetrator's harassment afterward.

(1) The applicant states, "I never got treatment for my rape while I was in the military. It was not something that people got treated for. On top of the stigma against reporting a rape, I did not know who to turn to. When you're in basic training, no one believes you. The drill sergeants make sure that they're intimidating, and they do not welcome conversations about your experiences. However, I have been treated at (a counseling center in her area) and currently receive treatment at the VA."

(2) "Being in the military physically harmed me and it took something from me that I will never get back, namely my virginity. Dealing with the effects of being raped has led to instability in my life. I have been unable to hold jobs for long periods due to my distrust of male coworkers, and I have struggles living in apartment complexes with lots of people. I am hopeful that the VA home loan will help me be able to get a home so that I can feel safe and stable."

b. VA Form 21-4138, dated 31 January 2020. The applicant provides further descriptions of the events surrounding her sexual assault. She states that, during BCT, the weather could get as hot as 102 degrees.

(1) "On June 13, 1986, was the beginning of a traumatic experience...We were having a drill and running our daily routine. I was running and became dizzy; I passed out. I fell directly on the ground. It was here that Drill Sergeant Z__ came to my rescue (at least I thought) and he gave me mouth-to-mouth resuscitation. I still remember the smell of his breath, the smoke smelling, smoke infested saliva that was left in my mouth after coming back from passing out."

(2) "I didn't know at the time that this was the beginning of harassment and ridicule that lasted the entire time of basic training. After hyperventilating on June 13, 1986, Drill Sergeant Z__ was always around. When other drill sergeants tried to instruct me, he rushed to be by my side, exchanging positions with them so that only he could assist and instruct me." On 3 July 1986, SGT Z__ woke her up early to work in the mess hall; this is where he sexually assaulted her. Thereafter, he would make it a point to say and do things to harass and humiliate the applicant.

c. VA Letter, dated 29 July 2021, in which the VA explains why it cannot approve the applicant's request for a COE. "To be eligible for the home loan benefit as a Reservist/National Guard Veteran, a minimum of six creditable years with an Honorable discharge is required. A creditable year is a year in which at least 16 points have been accrued in a year. A statement of points reflecting at least 6 years of at least 16 points is required to qualify." "The statement of points provided does not indicate 6 years of

creditable service. The statement of points indicate only two years of creditable service, for the service years ending in 1987 and 1988."

d. DA Form 5016 showing the following:

(1) For the period 19850322 through 19880321, the applicant accrued the following creditable points:

- 19850322-19860321 – 15
- 19860322-19870321 – 27
- 19870322-19880321 – 17

(2) For the eight periods from 19880322 through 19960321, the applicant earned only 15 membership points per year, with no other points accumulated.

5. A review of the applicant's service records shows the following:

a. On 22 March 1986, after obtaining her parents' consent, the applicant enlisted into the USAR for 8 years. (At the time, the applicant was 17 and had not yet graduated from high school; in May 1986, she earned her high school diploma).

(1) As part of her enlistment agreement, the applicant acknowledged, on a DA Form 3540 (Certificate and Acknowledgement of Service Requirements for Individuals Enlisting, Reenlisting, or Transferring, into Troop Program Units (TPU) of the U.S. Army Reserve) that:

(a) The applicant had selected to serve as a TPU member for 6 years and then transfer to the IRR for the remaining 2 years.

(b) Additionally, the applicant affirmed that she was required to satisfactorily participate for the entire term of her enlistment. Satisfactory participation consisted of attending all scheduled unit training assemblies (at least 48 per year) and completing one annual training for not less than 14 days per year. Accruing 9 or more unexcused absences from unit training assemblies during any continuous 365-day period could result in the applicant being declared an unsatisfactory participant.

(2) On a DA Form 3261-R (Selected Reserve Incentive Program – Enlistment Bonus Addendum) the applicant affirmed that, in exchange for a bonus of \$1,500, she would serve her initial 6 years in a bonus unit (2nd Battalion, 518th Regiment), unless excused for the convenience of the government.

b. On 5 June 1986, and under the split training option, the applicant entered Phase I of her initial active duty for training; (Phase I consisted of BCT, and

Phase II was advanced individual training for the award of a military occupational specialty (MOS)).

c. On 15 June 1986, emergency responders transported the applicant to the supporting military hospital's emergency room.

(1) The responders had found the applicant lying on the ground, and bystanders said the applicant was hyperventilating. The applicant complained of a headache, and the emergency responders noted that the applicant "often stares into space, will not cooperate."

(2) The emergency room physician identified the chief complaint as, "Hyperventilation" (sic). Under description: "S – 17 yo b ♀ ☐ hyperventilation episode today. She is currently ☐ complaints. O – PE (not clearly legible)." The doctor released the applicant to her BCT unit with one day of limited duty.

d. On 6 August 1986, the Army released the applicant from active duty and returned her to her TPU; the Army used a DD Form 220 (Active Duty Report) to record the applicant's IADT.

e. On 26 April 1988, the applicant's TPU commander issued her a letter of instruction, which advised her she had missed four unit training assemblies, respectively on 23 April 1988 and 24 April 1988. The commander further wrote absences only be excused for reasons of sickness, injury, emergency, or other circumstances beyond the applicant's control, and that she would need to furnish an appropriate affidavit or certification by a doctor, medical officer.

f. Orders, dated 25 May 1988, announced the applicant's voluntary reassignment to a different TPU. On 3 June 1988, those orders were revoked; the applicant's available service record is void of any documentation showing the reason for the revocation. On 14 June 1988, the applicant's TPU commander advised her, via memorandum, that her pending reassignment had been revoked, and she needed to attend the unit's next training assembly, scheduled for 17 and 18 June 1988.

g. On 21 June 1988, the applicant's TPU commander sent her a letter of instruction, advising her she had missed four unit training assemblies, respectively on 18 June and 19 June 1988; by this point, she had accumulated eight unexcused absences. On 18 July 1988, her TPU commander informed the applicant that, due to her absence from unit training assemblies, on 16 and 17 July 1988, she had accrued a total of twelve unexcused absences.

h. On 18 August 1988, the applicant's TPU commander completed a Commander's Statement, wherein he stated, after a review of the applicant's records, the applicant

had accrued nine unexcused absences within a one-year period; as a result, the commander declared the applicant as an unsatisfactory participant. On 29 August 1988, orders released the applicant from the 2nd Battalion, 518th Regiment and reassigned her to the U.S. Army Control Group (Annual Training), with an effective date of 29 August 1988; the orders did not specify a character of service.

i. On 22 March 1994, ARPERCEN Orders honorably discharged the applicant from the USAR, effective 22 March 1994; the orders identified her unit of assignment as the USAR Control Group (Annual Training). The applicant's current DA Form 5016, available from the U.S. Army Human Resources Command (HRC), shows the following:

(1) For the period 19850322 through 19880321, the applicant accrued the below-listed creditable points:

- 19860322-19870321 – 27
- 19870322-19880321 – 17

(2) For eight periods, from 19880322 through 19940322, the applicant earned only 15 membership points per year, with no other points reflected.

6. On 5 January 2024, HRC provided an advisory opinion and a copy of the applicant's DA Form 5016. HRC stated they required supporting documentation to verify missing active and inactive duty points earned by the applicant and affirmed it could not make a determination as to how many points the applicant would have earned if she had not been transferred to the IRR.

7. On 10 January 2024, the Army Review Boards Agency forwarded a copy of HRC's advisory opinion for the applicant's review and the opportunity to submit matters in rebuttal. On 4 February 2024, counsel sent the following:

a. Counsel asserted that the Board is not bound by HRC's limited recommendation as the ABCMR has broad discretion to correct errors and remove injustices.

b. Counsel argued the evidence shows the applicant suffered a severe injustice that caused her to incur PTSD. The applicant's PTSD symptoms subsequently resulted in behavioral changes, which prevented her from participating in her TPU's training assemblies. Furthermore, prior to the sexual assault, the applicant was a "willing and satisfactory member of the Reserves...." The sexual assault altered the course of the applicant's life and resulted in significant pain and injustice. The requested corrections are necessary to remove the injustice experienced by the applicant.

BOARD DISCUSSION:

1. 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 through counsel carefully considered the applicant's request, supporting documents, evidence in the records and regulatory guidance. Upon review of the applicant's request, available military records and U.S. Army Human Resource Command -Army Service Center advisory opinion, the Board concurred with the advising official recommendation for denial finding the applicant provided insufficient documentations to verify all missing active and inactive duty points earned for each anniversary year.

2. Furthermore, the Board determined there is insufficient evidence to support the applicant's contentions for correction of her U.S. Army Reserve (USAR) separation orders to show her 22 March 1994 honorable discharge was from the U.S. Army Selected Reserve, vice U.S. Army Control Group (Annual Training) to include correction of the applicant's DA Form 5016 to reflect the award of at least one point per year from 1988 to 1994. The Board noted, without the necessary supporting documentation for the Board to consider the applicant's contentions are without merit and therefore, relief is denied.

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.

[REDACTED]

[REDACTED]

[REDACTED]

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 (AR) AR 135-91 (Service Obligations), in effect at the time, governed service obligations for U.S. Army Reserve (USAR) Soldiers.

a. Paragraph 2-1 (Statutory Obligation). Effective 1 June 1984, all persons enlisting into the Army incurred an 8-year statutory obligation.

b. Paragraph 3-1 (Satisfactory Participation in Troop Program Units (TPU)). Satisfactory participation was defined as attending all scheduled drills, unless excused by the unit commander. In addition, the Soldier has to attend and satisfactorily complete the entire period of an annual training, unless excused by his/her commander.

c. Paragraph 3-2 (Satisfactory Participation of Control Group Members).

(1) Soldiers assigned to Control Groups (including Annual Training and Reinforcement) had participation requirements; they were to:

- Complete and promptly return all military correspondence

- Promptly report any change in address
- Comply with other requirements imposed by the Commander, U.S. Army Reserve Personnel Center

(2) Satisfactory participation in a control group was credited toward the Ready Reserve portion of the statutory service obligation but did not reduce any active duty or active duty for training for which the Soldier had contracted to serve or was required to perform by law.

d. Paragraph 4-5 (Conditions of Excused Absence). Absence from scheduled drills, training periods, or annual training could be excused when sickness, injury, or some other circumstance beyond the Soldier's control caused the absence. At the discretion of the appropriate commander, equivalent training could be scheduled to make up the excused absence.

e. Paragraph 4-6 (Documentary Evidence). Soldiers who the commander had excused from training could be required to provide documentation to support the absence, normally within 15 days of the absence. Absences caused by sickness or injury required certification from a physician or medical officer.

f. Paragraph 4-9 (Conditions of Unexcused Absence).

(1) Enlisted Soldiers who were obligated by statute or contract were to be charged with unsatisfactory participation when, without proper authority, they:

- Accrued, in any 1-year period, a total of nine or more unexcused absences from scheduled drills
- Failed to attend or complete annual training

(2) Statutorily or contractually obligated enlisted Soldier who had been charged with unsatisfactory participation could be transferred to the Individual Ready Reserve (IRR) (i.e., U.S. Army Control Group (Annual Training) or U.S. Army Control Group (Reinforcement)).

g. Paragraph 4-11 (Unexcused Absence from Unit Training Assemblies).

(1) A Soldier who failed to attend a scheduled single or multiple unit training assembly (MUTA) was charged with an unexcused absence. When the absence involved a MUTA (or any portion of a MUTA), the charge was to be one unexcused absence for each 4-hour period not attended, not to exceed four unexcused absences.

(2) For counting unexcused absences, the 1-year period began on the date of the absence and ended one year later.

3. AR 135-178 (Enlisted Administrative Separations) in effect at the time, prescribed policies, standards, and procedures for the administrative separation of Reserve Component Soldiers.

a. Paragraph 1-18 (Characterization of Service), characterization at separation was based on the quality of the Soldier's service.

(1) Honorable is appropriate when the quality of the Soldier's service generally met the standards of acceptable conduct and performance of duty for military personnel or is otherwise so meritorious that any other characterization was clearly inappropriate.

(2) General under honorable conditions was granted for Soldiers whose service had been honest and faithful but significant negative aspects of the Soldier's conduct or performance outweighed the positive aspects in the Soldier's military record.

b. Paragraph 11-1 (Completion of Terms of Enlistment or Period of Statutorily Obligated Service). A Soldier being separated on expiration of enlistment or fulfillment of service obligation will be, awarded a character of service of honorable, unless an entry level separation is required, or the Soldier has been transferred to the IRR to fulfill a service obligation and given a tentative service characterization of less than honorable upon transfer.

4. AR 140-10 (Assignments, Attachments, Details, and Transfers), in effect at the time, prescribed policies and procedures for assigning, attaching, removing, and transferring USAR Soldiers.

a. Paragraph 2-1 (Ready Reserve). The Ready Reserve consisted of Soldiers assigned to Troop Program Units (TPU) and USAR control groups.

b. Paragraph 2-2 (USAR Control Groups).

(1) USAR Control Group (Annual Training). Soldiers were assigned to this control group when they had not completed their statutory military service obligation, had less than 3 years of active duty credit, and had a mandatory training requirement.

(2) USAR Control Group (Reinforcement). This control group was for Soldiers who may or may not have completed their statutory military service obligation, had completed 3 or more years of active duty, and had no mandatory training requirements.

c. Paragraph 2-4 (Selected Reserve – General). The Selected Reserve consisted of Soldiers assigned to a TPU; members of the USAR Control Group (Individual Mobilization Augmentee (IMA)); and members of the USAR Control Group (Active Guard/Reserve (AGR)).

5. AR 140-185 (Training and Retirement Point Credits and Unit Level Strength Accounting Records), in effect at the time, prescribed the types of training and activities for which retirement points could be awarded.

a. Paragraph 1-3 (Eligibility). Only Ready Reserve Soldiers (other than Reserve Officers Training Corps (ROTC) and Delayed Entry Control Group Soldiers) and Active Standby Reserve Soldiers were authorized retirement point credit.

b. Paragraph 2-1 (Criteria for Crediting Retirement Points). Eligible Soldiers could earn a maximum of 365 points per year (366 in a leap year). The maximum for inactive duty training was 60 points, with 15 points for membership.

c. Paragraph 2-2 (Criteria for Earning Retirement Points). Retirement points could be awarded for active duty service (AD), active duty for training (ADT), initial active duty for training (IADT), annual training (AT), and inactive duty training (IDT). The types of IDT included regularly scheduled unit training (UTA), multiple unit training (MUTA), Equivalent Training (ET) and training of individual Soldiers in a non-pay status.

d. Paragraph 2-4 (Criteria for Awarding Retirement Points).

(1) Personnel on AD, ADT, IADT, or AT were awarded one point for each calendar day they served in one of the foregoing categories.

(2) Most types of IDT were covered by one of the following rules:

- Four-Hour Rule – One point for each scheduled 4-hour period of IDT
- Two-Hour Rule – One point for each 2-hour or greater period
- Two/Eight Hour Rule – One point for each 2-hour or greater period

//NOTHING FOLLOWS//