

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230013514

APPLICANT REQUESTS:

- reconsideration of her previous request to reverse the Deputy Assistant Secretary of the Army Review Boards decision for:
 - repayment of recouped monies for the enlistment bonus
 - credit of 6-months of missing service due to her improper discharge
- as a new request a personal appearance before the Board

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

- Two DD Forms 149 (Application for Correction of Military Record)
- Self-authored statement
- Defense Finance and Accounting Service (DFAS) letter

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 AR20220009948 on 10 April 2023.

2. The applicant states if she had not been unjustly discharged from the U.S. Army Reserve (USAR), she would have been able to fulfill the remainder of her enlistment contract. Then the enlistment bonus which she had already been paid would not have been garnished from her wages. She is a single parent and the garnishment of her wages caused great financial hardship.

a. She firmly believes her discharge was unwarranted which led to a significant financial hardship and emotional distress, affecting her overall wellbeing and stability. This became evident when she was compelled to repay her enlistment bonus.

b. The Army Discharge Review Board (ADRB) determined her characterization of her service was improper. She was not notified of any factor which would have

warranted receiving an under honorable conditions (General) discharge. Therefore, the ADRB upgraded her characterization of service to honorable.

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

a. The applicant's service record was void of the DD Form 4 Enlistment/ Reenlistment Document – Armed Forces of the United States) for her initial enlistment in the USAR. However, DA Form 3540 (USAR Service Requirements and Methods of Fulfillment) shows she enlisted in the USAR on 17 April 2009. Section IV (Service Obligation) shows she enlisted in the USAR for a total of 8 years in the U.S. Armed Forces. She agreed to serve 6 years in a troop program unit Selected Reserve and 2 years in the Individual Ready Reserve. She was a non-prior service applicant who enlisted for Military Occupational Specialty (MOS) 52D (Power Generation Equipment Repairer). She was authorized the entitlements of Montgomery GI Bill (MGIB) kicker in the amount of \$350.00 and a non-prior service enlistment bonus in the amount of \$20,000.00.

b. DA Form 5261 (Selected Reserve Incentive Program – Enlistment Bonus Addendum) shows the applicant enlisted in the USAR for a minimum of 6 years for a cash enlistment bonus.

(1) Section V (Entitlement) shows the applicant was entitled to a non-prior service enlistment bonus in the amount of \$20,000.00. She would receive her initial payment of 50 percent of the total authorized amount upon completion of initial active duty for training and qualification in MOS 52D. The applicant would receive the remaining unpaid portion of the non-prior service enlistment bonus in two subsequent payments of 25 percent of the total bonus amount paid after successful completion of the second and fourth years of her enlistment term of service.

(2) Section VII (Termination) shows the enlistment bonus would be terminated and could result in recoupment action if she:

- became an unsatisfactory participant
- moved to non-bonused unit or MOS if reclassified
- failed to become MOS qualified in 24-months
- separated as an enlisted Soldier for any reason
- accepted a permanent civilian position where membership in the Selected Reserve was a condition of employment
- exceed maximum period of non-availability
- failed to extend USAR contract term of service to compensate for period of non-availability
- enroll in the Senior Reserve Officers Training Corps (SROTC)

c. DA Form 5435 (Statement of Understanding the MGIB Selected Reserve) shows it provides financial assistance for the pursuit of educational programs approved by the Veterans Affairs (VA) for enlisted Soldiers serving in the Selected Reserve. To qualify for the entitlement a Soldier must:

- contract to serve at least 6-years in the Selected Reserve
- be a secondary school graduate
- complete or have completed initial active duty for training including basic military and technical skill training
- not:
 - be an unsatisfactory participant
 - elect to credit service toward the MGIB for active duty service
 - be receiving financial assistance as a member of the ROTC
 - be pursuing graduate studies or a course of education leading to a degree above a baccalaureate
 - be serving in an Active Guard/Reserve (AGR) status

Section VII (Termination of Entitlement) shows the MGIB will be terminated if:

- declared an unsatisfactory participant
- discharged or separated from the Selected Reserve except to accept appointment as a commissioned officer or warrant officer with assignment to the Selected Reserve
- vacate commission and enlist with assignment to the Selected Reserve
- disability which occurred after eligibility date, and which was not a result of own misconduct

during the period of 1 October 1991 through 30 September 1999, if involuntarily separated from the Selected Reserve, the Soldier will retain educational assistance entitlement except for:

- early retirement
- a result of unsatisfactory participation, unsatisfactory performance, or under other adverse conditions including a transfer with a tentative characterization of under other than honorable condition
- failed to meet qualification for membership in the Selected Reserve to include medical fitness standards
- immediately eligible for retired pay based on military service
- eligible for separation pay
- refuse to accept another position in Selected Reserve offered to me and

within reasonable commuting distance or close proximity to unit which affiliated and did not require a reduction in grade

- voluntarily enter on extended active duty in the active Army, enlist in Regular Army or another Reserve component
- enter active duty or AGR program
- receive financial assistance under TOTC scholarship program
- complete a 10-year period which begins on date entitled to assistance under MGIB except provided for by VA

Receive financial educational assistance and lose entitlement due to unsatisfactory participation, may be required to refund part of the educational assistance received plus interest. The amount of recoupment is determined by the Department of Defense and the VA.

d. On 31 May 2009, Orders Number 9151001, issued by the Military Entrance Processing Station, ordered the applicant to initial active duty for training, effective 8 June 2009, for attendance to Basic Combat Training and Advanced Individual Training.

e. The applicant was honorably released from active duty on 17 November 2009. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 5-months and 10-days of active service. It also shows in items:

- 11 (Primary Specialty): 52D (Power Generator Equipment Repairer
- 14 (Military Education): Power Generation Equipment Repairer Course

f. On 20 October 2014, Orders Number 14-293-00007, issued by Headquarters (HQs), 63rd Regional Support Command (RSC), the applicant was reduced in rank to private (PVT)/E-1, effective 20 October 2014, and was discharged from the USAR effective 27 October 2014 with an under other than honorable conditions characterization of service.

g. On 15 January 2015, Orders Number 15-020-00060, issued by HQs, 63rd RSC, revoked Orders Number 14-293-00007 pertaining to the reduction and discharge of the applicant.

h. On 20 January 2015, Orders Number 15-020-00056, issued by HQs, 63rd RSC, the applicant was discharged from the USAR, effective 27 January 2015, with an under honorable conditions (General) characterization of service.

i. On 25 March 2021, the applicant petitioned the Army Discharge Review Board (ADRB) to have her characterization of service upgraded. In that petition she stated "she went through a difficult time after her brother was murdered and she needed some

time to deal it. Once she was mentally in a better place, she made up her battle assembly dates which she missed during this period. A short time later she was notified that she was reduced in rank and discharged with a characterization of service of Other Than Honorable Conditions."

j. On 7 February 2022, the Army Review Boards Agency (ARBA) notified the applicant the ADRB granted her full relief regarding her request (ADRB Docket Number AR20210007535) for upgrade of her discharge. The Board determined the characterization of service was improper. Her record indicated she was not notified of any specific factors which would have warranted an under honorable conditions (General) characterization of service. Therefore, the characterization was not proper and equitable, the Board granted relief in the form of an upgrade to an honorable characterization of service.

k. On 14 April 2022:

(1) Orders Number 22-104-00001, issued by HQs, 63rd Readiness Division (RD), revoked Orders Number 14-293-00007 pertaining to the reduction and discharge of the applicant.

(2) Orders Number 22-104-00002, issued by HQs, 63rd RD, the applicant was honorably discharged from the USAR, effective 27 October 2014. Additional Instructions stated the discharged was in accordance with the ARBA directive AR20210007535.

l. On the date of discharge from the USAR, 27 October 2014, the applicant completed 5 years, 6 months, and 10 days of her initial contract.

4. The applicant provides the letter from DFAS which informed the applicant the debt in the amount of \$8,929.40 had been paid in full as of 14 September 2017 for the repayment of the MGIB and recoupment of a bonus.

5. In Docket Number AR20220009948 on 10 April 2023, the Board determined relief was warranted.

a. The repayment of recouped monies for the MGIB and enlistment bonus had been actioned based on the DFAS letter to the applicant; therefore, the Board took no further action on that portion of her request. However, the Board determined that based on the erroneous debt collection, the applicant was unable to fulfill the terms and conditions of her contract through no fault of her own and should receive credit for the 6 months of missing service due to her improper discharge.

b. The Deputy Assistant Secretary of the Army (Review Boards) reviewed the evidence and findings and recommendations of the Board members. Based upon the

available evidence showing the applicant signed an enlistment contract and failed to complete the terms of her contract, he did not see an error or injustice warranting the correction of her record. He overturned the Board's recommendation and her application was denied.

6. In the processing of ABCMR Docket Number AR20220009948, the Office of the Deputy Chief of Staff G1 provided an advisory opinion regarding the applicant's request. The advisory official recommended disapproval of the request for administrative relief to refund the debt collected. The Department of Defense (DoD) policy in the DoD Financial Management Regulation states a failure to fulfill the service requirements specified in the written agreement may result in termination of the agreement and the repayment of the unearned portion of the pay or benefit. As a general rule, repayment will not be sought if the Soldier's inability to fulfill the eligibility requirements was due to circumstances determined reasonably beyond their control. Therefore, the bonus portion of the debt may be refunded if the Board determines a change to the applicant's record was warranted and her inability to satisfy the provisions of the bonus agreement were beyond her control.

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 carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's available military records and advising official with the Office of the Chief of Staff G1, the Board found the applicant failed to fulfill the service requirements outlined in her authenticated written agreement indicative of the termination of the agreement and repayment of the unearned portion of the pay or benefit. The Board noted the applicant's struggle with personal hardships; however, found her inability to satisfy the provisions outlined in her agreement were within her control and therefore denied relief.

2. The Board found the applicant's separation processing to be proper and found no error or injustice in the processing or characterization of service. Therefore, her request to be awarded 6 months of credit is denied.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 amendment of the ABCMR decision rendered in Docket Number AR20220009948 on 10 April 2023.

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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. Department of Defense Financial Management Regulation 7000.14-R, Volume 7a (Military Pay Policy – Active Duty and Reserve Pay), prescribes the criteria for determining creditable service for military members; provides examples for computing valid creditable service; states periods of service that are not creditable for pay purposes; cites conditions for the payment of military pay entitlements; explains the computation of leave and conditions for leave accrual; and provides for situations where enlistments are not valid.

a. Chapter 1, paragraph 3.4.2. Under circumstances not specifically mentioned in this chapter, the Secretary of the Military Department concerned has the discretion to, at some point in the process, render a case-by case determination that the member's repayment of, or the Military Department's full payment of an unpaid portion of, a pay or benefit.

b. Chapter 9, paragraph 2.5.1, a member, who does not complete the term of enlistment, or extension of enlistment, or who is not technically qualified in the skill for which the bonus was paid, will be subject to the repayment provisions of Chapter 2.

c. Chapter 9, paragraph 2.5.2, a member, who is discharged 12-months or less before the expiration of enlistment or extension of enlistment in accordance with Title 10 USC, section 1171 may be considered to have completed the terms of enlistment or extension of enlistment for which the bonus was paid. For all other early discharges, the Military Departments will determine and advise when repayment is not required.

2. Army Regulation (AR) 601-210 (Active and Reserve Components Enlistment Program) in effect at the time, prescribes eligibility criteria governing the enlistment of persons, with or without prior Service (PS), into the Army Reserve (AR).

a. Paragraph 10-8 (Termination of incentives), incentive eligibility will be stopped when any of the termination reasons as listed below apply and that member shall not be eligible to receive any further incentive payments, except for Service performed before the termination date. Once declared ineligible, termination of an incentive will not affect a Soldier's responsibility to serve their current statutory or contractual Service commitment. Termination of eligibility to an incentive will occur, if a Soldier:

- becomes an unsatisfactory participant per AR 135–91; the termination date entered into the personnel data reporting systems must be the date the Soldier is declared an unsatisfactory participant
- is an enlisted Soldier attending high school at time of enlistment and does not become a secondary school graduate within the required time limit

- fails to become MOS-qualified or -certified in the health professional specialty for which contracting
- accepts an AGR or a permanent military technician position where membership in the SELRES is a condition of employment
- voluntarily moves to a non-bonus unit or MOS
- exceeds the maximum authorized period of nonavailability
- fails to extend the contracted term of Service for an authorized period of nonavailability
- separates from a SELRES unit or the IRR of the AR or ARNGUS for any reason
- has received the maximum benefit authorized
- fails to participate satisfactorily in required training during the entire period of service agreed to in accordance with the written agreement, unless the failure to participate satisfactorily was due to reasons beyond the control of the member (that is; death, injury, illness or other impairments)

b. Paragraph 10-9 (Recoupment of incentives), recoupment conditions in this paragraph cover all incentives. When relief is not granted through the waiver process from incentives received, the member must refund a pro-rata amount to the Government when termination is due to reasons outlined in paragraph 10-8. All debts to the U.S. Government will be submitted for collection from SELRES and Ready Reserve members. Delinquent repayment(s) will result in the collection of interest on the remaining balance.

3. AR 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

4. AR 15-185 (Army Board for Correction of Military Records (ABCMR)), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states 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.

//NOTHING FOLLOWS//