

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230013517

APPLICANT REQUESTS: correction of her records to show she was discharged from the Army National Guard (ARNG) due to physical disability.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 for the period 1 February-25 May 2000
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service)
- two DA Forms 4187 (Personnel Action)
- medical records (10 pages)
- letter from the Department of Veterans Affairs (VA) (Regional Loan Center)

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 she was discharged under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management) for failure to report to annual Inactive Army National Guard (ING) muster. She was not aware of this and has no record of what happened. However, she had active duty medical conditions that started in February 2000 and continued through May 2000 and these conditions worsened throughout the years. The conditions include leg fractures, miscarriage, sinusitis, and migraines. She needs her discharge change to a medical discharge because she needs a Certificate of Eligibility (COE) for a home loan. She will not receive the COE without the change in the reason for her discharge.
3. The applicant enlisted in the ARNG on 29 November 1999. Her DD Form 214 shows she attended initial entry training from 1 February to 25 May 2000.

4. Orders issued on 19 May 2004 ordered the applicant's transfer to the ING effective 17 November 2003. The reason for her transfer to the ING is unknown.

5. The applicant's available records contain a memorandum from her unit commander, dated 7 December 2004, notifying her of an annual muster assembly on 8 January. She was also informed that all Soldiers of her unit assigned to the ING were required to participate in the muster assembly. She was required to acknowledge receipt of the letter by signing and returning the letter to her unit. The bottom half of the letter does not show her signature acknowledging receipt of the notification of muster assembly.

6. The applicant's available records also contain a DA Form 4187, dated 19 January 2005, showing her unit commander requested her discharge from the ARNG based on her failure to report to annual ING muster. The DA Form 4187 also shows her commander indicated she did not have a physical disability.

7. Orders issued on 21 April 2005 ordered the applicant's discharge from the ARNG and her transferred to the U.S. Army Reserve (USAR) Control Group (Annual Training) effective 10 January 2005.

8. The applicant's NGB Form 22 shows she was discharged from the ARNG and transferred to the USAR Control Group (Annual Training), effective 10 January 2005, under the provisions of NGR 600-200, paragraph 8-27v, for failure to report to annual ING muster.

9. The applicant provided two DA Forms 4187 pertaining to her reassignments within her ARNG unit. She also provided a letter from a VA Regional Loan Center showing her request for a COE to utilize the VA home loan benefit was denied because her length of active or ARNG service does not meet the basic eligibility requirements for a COE. She was also informed her request was referred to the Veterans Service Center for review to determine if she was (or could have been) discharged for a service-connected disability.

#### 10. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant has reapplied to the ABCMR in essence requesting a referral to the Disability Evaluation System (DES). She states:

"I am requesting to have my honorable discharge corrected to honorable discharge with disability. I was discharge to NGR 600-200, with a failure to report to annual ING [Inactive National Guard]. I was not aware of this and no record of what happen.

However, I had active-duty medical condition started in Feb 2000 and continued thru May 2000. However, set to my National Guard unit with these conditions and worsen throughout the years, including leg fractures, miscarriage, sinusitis, migraines. I am need the disability or medical because I need a Certificate of Eligibility for a home and have not been able to receive it without the change."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. A Report of Separation and Record of Service (NGB Form 22) shows she entered the Army National Guard on 29 November 1999 and received an honorable discharge from [REDACTED] Army National Guard (ARNG) 10 October 2005 under authority provided in paragraph 8-27v of NGR 600-200, Enlisted Personnel Management (1 March 1997): Failure to report to annual Inactive National Guard muster.

d. Contemporaneous civilian clinical encounters show she was pregnant in 1999 and again 2002/2003. In a 23 March 2003 "To Whom It May Concern" memorandum, a physician states the applicant underwent Cesarian section on 1 January 2003 and would not be able "to return to active duty for at least 3-6 months."

e. The same physician released the applicant to light duty on 27 June 2003:

"Ms. [Applicant] is under my care as a patient. She may be released to go back to duty with the following limitations; no sit-ups, push-ups, running, jumping, medium to heavy lifting, and not to be expose to extreme heat."

f. The applicant was transferred to the Inactive Army National Guard effective 17 November 2003. In a 7 December 2004 memorandum, her company commander informed her she was required to attend the annual muster required for all ING Soldiers on 8 January 2005. On 19 January 2005, her company commander initiated action to separate her from the [REDACTED] ARNG.

g. There is no evidence the applicant had any duty incurred medical condition which would have failed the medical retention standards of chapter 3, AR 40-501 prior to her discharge; or that prevented the applicant from attending drills and/or maintaining contact with her unit. Thus, there was no cause for referral to the Disability Evaluation System.

h. JLV shows the applicant has several VA service-connected disability ratings. However, the DES only compensates an individual for service incurred medical condition(s) which have been determined to disqualify him or her from further military service and consequently prematurely ends their career. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career. These roles and authorities are granted by Congress to the Department of Veterans Affairs and executed under a different set of laws.

i. It is the opinion of the ARBA medical advisor that a referral of her case to the DES is not warranted.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendation in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's narrative reason for separation.

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.

1/7/2025

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. NGR 614-1 (Inactive Army National Guard) states the ING is designed as an administrative category for, among other categories, active status Soldiers who are unable to perform their required duties for some limited time. Soldiers in active status may request transfer to the ING for various reasons that include change of residence, incompatibility with civilian employment, temporary overseas or out-of-state residency for education, employment, a missionary obligation, pregnancy, and temporary medical disqualification (not due to line of duty injury). All units which have ING Soldiers assigned will conduct an annual muster to, among other purposes, screen Soldiers to determine their availability for mobilization and to conduct the annual periodic health assessment. Attendance of all ING Soldiers is mandatory. Soldiers who do not respond to the notification of annual muster assembly will be considered for discharge.
3. NGR 600-200 paragraph 8-27 lists reasons for discharge from the state ARNG not listed in paragraph 8-26 (Discharge from State ARNG and/or Reserve of the Army) or Army Regulation 135-178 (ARNG and USAR Enlisted Administrative Separations). Soldiers will be notified of recommendations for involuntary discharges and afforded a reasonable opportunity to provide a written response for consideration by the separation authority. Paragraph 8-27v shows that failure to report to for annual ING muster per NGR 614-1 is a reason for discharge from the ARNG.

4. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of their office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

5. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//