

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2025

DOCKET NUMBER: AR20240000248

APPLICANT REQUESTS: in effect, reinstatement of her Active Guard Reserve (AGR) status in the Army National Guard (ARNG).

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

- DD Form 149 (Application for Correction of Military Record) (2)
- Self-authored statement to a Congresswoman, wherein she sought assistance with her involuntary separation from the ARNG
- Images of email correspondence, memorandums for record (MFR) between the applicant and members of her chain command, in regard to concerns with monthly weigh-ins, DA Form 5501 (Body Fat Content Worksheet (Female)), and updates to her AGR tour extension
- various personnel documents detailing the facts and circumstances surrounding her enrollment in the Army Body Composition Program (ABCP), and involuntary release from the AGR program
- Army Regulation 600-9 (The ABCP)

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 separated without due process. Her separation was completed without legal representation. Her organization proceeded with separation actions despite the policies and regulations that were in place. She attempted to resolve this injustice with the ARNG; however, she received no response to her inquiries.
3. A review of the applicant's available service records reflect the following:
 - a. She enlisted in the ARNG on 13 May 2004.

b. She was ordered to active duty and served in Iraq from on or about 4 April 2007, to on or about 26 April 2008.

c. She entered active duty on 15 February 2009.

d. A DA Form 5501 prepared on 26 April 2019, reflects she was given a body fat assessment and exceeded the allowable body fat standard. A DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) was initiated for ABCP.

e. Two memorandums, Subject: Extension of AGR Tour for Staff Sergeant (SSG) B_, dated 26 April 2019, and each signed by the AGR Manager and the Human Resource Officer (HRO), requested the applicant's commander provide documents with a recommendation in regard to the applicant's AGR tour extension.

f. On 29 April 2019, she was enrolled in the ABCP and directed to:

- Complete a Soldier Action Plan
- Receive nutritional counseling
- Participate in monthly unit body fat assessments
- Participate in physical fitness program
- Undergo a medical examination

g. She received formal counseling on 7 May 2019, for failing her body fat assessment, given on 26 April 2019. By signature, the applicant disagreed with the counseling and referenced an attached rebuttal.

h. MFR, Subject: Rebuttal to Counseling, dated 9 May 2019, and signed by the applicant requested her commander to consider the following information and rescind the counseling statement, her enrollment in the ABCP and the DA Form 268. She states, in effect, there were procedural errors with her weigh-in, inappropriate comments, and the scales were not calibrated.

i. MFR, Subject: ABCP Request for Nutrition Counseling dated 14 May 2019, and signed by the Physician Assistant, noted the applicant received nutritional counseling.

j. MFR, Subject: AGR Tour Continuation Memorandum dated 22 May 2019, and signed by the applicant, in effect, noted her grievances with her weigh-in and the potential impact to continuation of her AGR tour.

k. MFR, Subject: AGR Tour Continuation Recommendation – SSG B_, dated 23 May 2019, and signed by the Readiness Noncommissioned Officer, recommended the applicant's AGR tour be extended for 2 years. He noted the applicant had some valid concerns surrounding her weigh-in conducted on 26 April 2019.

l. She received additional counseling on 6 June 2019, for refusing to conduct monthly weigh-in as mandated. By signature, the applicant disagreed with the counseling and stated she did not fail to complete weigh-in, she just requested to be screened by someone else or a sergeant major.

m. A DA Form 5501 prepared on 7 June 2019, reflects she was given a body fat assessment and exceeded the allowable body fat standard.

n. She received counseling for noncompliance of the body fat standard. By signature, the applicant disagreed with the counseling stating she thought she would be taped by different Soldiers and felt that she was being targeted.

o. She received additional counseling on 11 July 2019, for failing to report for monthly weigh-in as mandated. By signature, the applicant disagreed with the counseling stating she had a legal appointment that conflicted with date of the weigh-in.

p. A DA Form 5501 prepared on 12 July 2019; reflects she was given a body fat assessment and exceeded the allowable body fat standard.

q. MFR, Subject: Army Body Composition Medical Evaluation Results, dated 18 July 2019, and signed by a Physician Assistant provided information concerning the evaluation of the applicant. She was medically cleared to fully participate in the ABCP and fully participate in unit physical training.

r. She received additional counseling on 8 August 2019, for failing to report for monthly weigh-in as mandated. By signature, the applicant disagreed with the counseling and referenced an attached MFR.

s. MFR, Subject: Counseling (Weigh-in 8 August 2019), and signed by the applicant, in effect, noted her grievances with the coordination of her previously scheduled weigh-in.

t. She received additional counseling on 16 August 2019, for failing to report for monthly weigh-in as mandated. By signature, the applicant disagreed with the counseling and referenced an attached MFR with supporting documents. The available record is void of the MFR.

u. On 3 September 2019, the applicant's immediate commander notified the applicant that she was initiating action to involuntarily release her Full Time National Guard Duty (FTNGD), under the provisions of National Guard Regulation 600-5 (The AGR Program Title 32, FTNGD Management), paragraph 6-5. The specific reason for this action was the applicant's failure to demonstrate satisfactory progress while enrolled in the ABCP. She was advised that if the commander's recommendation was

approved, she would be released from the FTNGD and the ARNG. The applicant acknowledged receipt of the notification.

v. On 3 September 2019, the applicant rendered her election of rights wherein she acknowledged receipt of the notification of release for cause from FTNGD pursuant to National Guard Regulation 600-5, paragraph 6-5, for failure to demonstrate satisfactory progress while enrolled in the ABCP. Before completing her response, she understood that she had the right to consult with an appointed counsel, or military counsel of her choice. She requested copies of documents going before the separation authority. She noted she submitted a statement in her own behalf; however, the available record is void of her statement.

w. MFR, Subject: Rebuttal to Involuntary Separation, dated 3 October 2019, and signed by the applicant requested her commander to reconsider and rescinded her involuntary release based on bias, procedural errors with her weigh-ins, and subsequent enrollment in the ABCP.

x. A DA Form 5501 prepared on 27 November 2019; reflects she was given a body fat assessment and exceeded the allowable body fat standard.

y. On 16 January 2020, the separation authority approved curtailment of the applicant's AGR tour and directed her release from FTNGD under the provisions of National Guard Regulation 600-5, with an honorable characterization of service.

z. On 16 January 2020, the separation authority approved curtailment of the applicant's military service and directed her involuntary release from the ARNG, under the provisions of Army Regulation 600-9, and National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-1a.

aa. The applicant was honorably released from active duty on 1 April 2020. Her DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms she was released under the provisions of National Guard Regulation 600-5, paragraph 6-5, for weight control failure. She completed 11 years, 1 month, and 17 days of net active service this period.

bb. Orders 0000498222.00 dated 9 July 2020, issued by the Virgin Island ARNG, Kingshill, Virgin Islands, terminated the applicant from the ARNG, effective 30 April 2020, under the provisions of National Guard Regulation 600-200.

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 review based on law, policy, and regulation. The evidence of record establishes that the applicant entered active duty in an Active Guard Reserve (AGR) status on 15 February 2009. A DA Form 5501, dated 26 April 2019, reflects that she underwent a body fat assessment and exceeded the allowable body fat standard. Consequently, a DA Form 268 was initiated to enroll her in the Army Body Composition Program (ABCP). The Board considered the applicant's rebuttal to the Memorandum for Record (MFR), dated 9 May 2019, in which she alleged procedural errors during her weigh-in, including inappropriate comments and uncalibrated scales. Notwithstanding her rebuttal, the applicant failed subsequent ABCP assessments. On 18 July 2019, following a medical evaluation, she was cleared to fully participate in the ABCP and unit physical training. Accordingly, her immediate commander initiated action to involuntarily release her from Full-Time National Guard Duty. The separation authority approved this action, thereby curtailing the applicant's AGR tour. Upon review, the Board determined that the separation action was properly executed, found no error or injustice, and denied the applicant's request for relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

X //SIGNED//

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. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 600-9 (The ABCP) prescribes procedures governing fitness and weight and body fat standards. Chapter 3, of this regulation sets the policies, standards, and procedures for the Army Body Composition Program.
 - a. Standard:
 - Soldiers are required to meet the prescribed body fat standard, and will be screened every 6 months, at a minimum.
 - The only authorized method of estimating body fat is the circumference-based tape method.
 - Commanders are authorized to use the weight for height table as a screening tool in order to expedite the semi-annual testing process.

- Commanders have the authority to direct a body fat assessment on any Soldier that they determine does not present a Soldierly appearance to ensure Soldier meets the screening table weight for his or her measured height.
- Soldiers identified as exceeding the body fat standard will be flagged in and enrolled in the ABCP.

b. Enrollment in the ABCP:

- Regular and Reserve Component Soldiers who exceed body fat standards will be enrolled in the unit ABCP. Enrollment in the ABCP starts on the day that the Soldier is notified by the unit commander (or designee) that he or she has been entered in the program.
- While enrolled, Soldiers will be provided exercise guidance by the unit master fitness trainer and/or unit fitness training noncommissioned officer; counseling by a registered dietitian on sleep, activity, and performance nutrition for obtaining and maintaining optimal body composition and performance.

c. Actions, counseling, and evaluation for Regular Army and Reserve Component Soldiers on active duty. The following actions are required when a Soldier is determined to be exceeding the body fat standard: notification counseling, development of a Soldier Action Plan, and nutrition counseling.

d. Program failure:

- Satisfactory progress in the ABCP is defined as a monthly weight loss of either 3 to 8 pounds or 1 percent body fat
- A Soldier enrolled in the ABCP is considered to be failing the program if Soldier exhibits less than satisfactory progress on two consecutive monthly ABCP assessments; or after 6 months in the ABCP, Soldier still exceeds body fat standards, and exhibits less than satisfactory progress
- When a Soldier has failed the program, the commander will request a medical evaluation. If the evaluation finds no underlying medical condition, then the commander will initiate separation action, bar to continued service, or involuntary transfer to the Individual Ready Reserve (IRR)
- The commander or supervisor will inform the Soldier, in writing, that a bar to continued service, separation action, or a transfer to the IRR is being initiated

4. National Guard Regulation 600-5 (The AGR Program Title 32, FTNGD Management), in effect at the time, set forth the procedures for selecting, assigning, using, managing, and administering ARNG of the U.S. personnel serving on FTNGD in

an AGR status. Paragraph 6-5, of this regulation sets the policies, standards, and procedures for the involuntary release of AGR Soldiers from the FTNGD.

a. Guidelines for involuntary release.

(1) Counseling or a letter of reprimand.

(2) General Considerations. When deciding whether to initiate procedures for involuntary release, the following factors may be considered:

- Seriousness of the events or conditions
- The likelihood that the events or conditions will continue or reoccur
- The Soldier's ability to perform FTNGD in a satisfactory manner
- The Soldier's potential for further military service
- The Soldier's military service
- The possibility that reassigning the AGR Soldier will improve performance

b. When a commander or supervisor initiates an involuntary release, the notice will be in writing and will include:

(1) The basis for the proposed involuntary release.

(2) The right to consult with military counsel at no cost to the Soldier, and to consult with civilian counsel at the Soldier's own expense.

(3) Copies of the documents supporting the request for involuntary release.

(4) AGR Soldiers may be given the opportunity, but are not required, to request voluntary release from FTNGD in lieu of involuntary release.

(5) AGR Soldiers will acknowledge receipt in writing.

(6) The AGR Soldier will be given 30 days from receipt to rebut or comment.

(7) The Soldier will return the rebuttal and any supporting documents to the commander who initiated the recommendation.

(8) If the Soldier declines to respond as to the election of rights such declination will constitute a waiver of rights, and an appropriate notation will be made.

(9) The initiating individual will review the rebuttal, and any other documents provided and determine whether to withdraw the recommendation or continue the process.

(10) After reviewing the rebuttal, a Commander may withdraw the initiation of the involuntary release.

(11) If the Commander decides to pursue the involuntary release after reviewing the rebuttal, the recommendation and all supporting documents will be forwarded through command channels and the Office of the Staff Judge Advocate to the HRO/AGR Manager for action.

(12) The HRO/AGR Manager will conduct administrative review and forward packet to The Adjutant General (TAG) for final determination.

c. When involuntary release is approved by TAG:

(1) Effective date of releasing Soldier from FTNGD will be determined by the HRO/AGR Manager and will include use of accrued leave for transition leave.

(2) Orders releasing a Soldier from FTNGD, and other separation documents will be prepared per appropriate regulations.

d. Soldiers performing FTNGD who are being discharged or involuntarily separated, are entitled to separation pay provided they have completed at least six or more years, but fewer than 20 years, of active service.

5. National Guard Regulation 600-200 (Enlisted Personnel Management) in effect at the time, provided for the management of enlisted personnel. Chapter 6 of this regulation sets the policies, standards, and procedures for the separation of enlisted Soldiers from the ARNG. It states, in pertinent part, that Soldiers who do not conform to required standards of conduct and performance and Soldiers who do not demonstrate potential for further military service should be separated to avoid the high costs of continued service in terms of pay, administrative efforts, degradation of morale, and substandard mission performance.

//NOTHING FOLLOWS//