

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240001549

APPLICANT REQUESTS:

- upgrade of her uncharacterized discharge to honorable, based on medical
- change to her narrative reason for separation
- personal appearance before the Board
- debt remission associated with the Education Assistance Program (EAP)

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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 there appears to be an error with her military records regarding the circumstances surrounding her discharge from the Army National Guard (ARNG). The discharge was cited under National Guard Regulation 600-200 (Enlisted Personnel Management), 6-35d(4), for "Failure to Attend Initial Entry Training (IET) (Phase I or Phase II) within 24 Months." However, it is essential to clarify that the applicant was concurrently enrolled in the Reserve Officer's Training Corps (ROTC) and a participant in the Simultaneous Membership Program (SMP). The applicant had no intention of attending IET due to her commitment and participation in ROTC. This misunderstanding may have been caused by her simultaneous involvement in both ROTC and the ARNG. The applicant experienced a medical discharge from ROTC, which was not accurately reflected in her ARNG records. During this period of service, the applicant availed herself of education funding. Due to her medical discharge, there is an acknowledgment and commitment on the part of the applicant to repay her education funding. In summary, the applicant requests correction of her ARNG records to reflect the circumstances surrounding her service, her concurrent participation in ROTC and the SMP, and remission of her debt associated EAP.

3. On 4 September 2019, the applicant enlisted in the U.S. Army Reserve (USAR) Control Group (ROTC) and elected to participate in the Pennsylvania State University ROTC program with entitlement to a scholarship. The applicant endorsed DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) acknowledging her entitlement to full tuition and fees.

a. This document provides acknowledgment by the applicant that once she became obligated and then later disenrolled from the ROTC program, she would be subject to reimburse the U.S. Government through repayment of an amount of money plus interest, equal to the entire amount of financial assistance paid by the U.S. for her advanced education from the commencement of the contractual agreement to the date of her disenrollment.

b. Under the terms of the contract, the applicant further acknowledged that if she was disenrolled from the ROTC program, the Secretary of the Army retained the prerogative to either order her to active duty or order monetary repayment of scholarship benefits. Subsequent enlistment in an Armed Service would not relieve her of this repayment obligation.

4. Orders 295-0001, issued by the U.S. Army ROTC Battalion, The Pennsylvania State University, University Park, PA, released the applicant from the USAR Control Group (ROTC) for participation in the SMP/ROTC Program, effective 16 October 2019. Additionally, the applicant was assigned as a cadet in the grade of E-5.

5. On 17 October 2019, the applicant enlisted in the ARNG.

6. On 4 December 2020, the applicant endorsed National Guard Bureau (NGB) Form 594-1 (ARNG SMP Agreement) acknowledging her participation in the SMP. This document provides acknowledgment by the applicant that if she was disenrolled from or failed to complete the Advanced ROTC Course, then she would:

- be deleted from the SMP
- be retained in the enlisted grade held prior to participation in the SMP
- be required to execute the terms of the enlistment/reenlistment agreement excluding this amendment
- complete basic training and Advanced Individual Training

7. Orders CC-1099-00943, issued by the U.S. Army Cadet Command and Fort Knox, Fort Knox, KY, on 9 April 2021, ordered the applicant to active duty for training for the purpose of ROTC Summer Training, with a 22 June 2021 report date.

8. A letter issued by Headquarters, U.S. Army Cadet Command and Fort Knox, KY, on 23 November 2021, disenrolled and discharged the applicant from the ROTC Program

under the provisions of Army Regulation 145-1 (Senior ROTC Program, Organization, Administration and Training), due to disqualifying medical conditions, major depressive disorder and eating disorder. The total amount of Federal funds spent in support of her education was \$31,487.00. However, the debt was waived under the authority of the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) memorandum, dated 20 December 2019. Additionally, pursuant to this disenrollment, she was ineligible to commission or enlist in the Armed Forces because it had been determined that she no longer met the medical qualifications under Army Regulation 40-501 (Standards of Medical Fitness).

9. Orders 0001813645, issued by the Pennsylvania ARNG, Army Element Joint Forces Headquarters, Annville, PA on 9 May 2022, demoted the applicant in rank to Private/E-2 effective 8 December 2021, for SMP withdrawal and elimination from ROTC.

10. Orders 0001762600, issued by the Pennsylvania ARNG, Army Element Joint Forces Headquarters, Annville, PA on 7 April 2022, assigned the applicant to Headquarters and Headquarters Battalion, 28th Infantry Division, Harrisburg, PA, effective 9 December 2021. She was assigned a duty position, awaiting initial active duty training.

11. By memorandum for record on 18 January 2023, the applicant acknowledged that she understood that all incentives stated within her enlistment document, ARNG enlistment agreement, ARNG bonus addendum, and State EAP were effectively null-and-void and no longer authorized. Furthermore, she understood that she may not further attempt to use the aforementioned incentives.

12. On 18 January 2023, the applicant's commander notified her that he was initiating actions to separate her under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), Chapter 8, for entry level performance and conduct. As the specific reason, the commander cited her failure to become military occupational specialty qualified within 24 months of her enlistment.

13. On 19 February 2023, the applicant acknowledged receipt of the contemplated separation action, the possible effects of the discharge, and the rights available to her

a. She indicated she understood she could expect to encounter extreme prejudice in civilian life if her characterization of service is not listed as honorable.

b. She waived her right to consult with an appointed counsel for consultation; or military counsel of her own choice, or civilian counsel at her own expense.

c. She waived her right to submit a statement in her own behalf.

14. The applicant's commander formally recommended her separation under the provisions of Army Regulation 135-178, Chapter 8.

15. Consistent with the chain of command's recommendations, the separation authority approved the applicant's separation action on 10 August 2023, and directed her discharge with a service characterization of uncharacterized.

16. The applicant was discharged accordingly on 10 August 2023. Her NGB Form 22 (National Guard Report of Separation and Record of Service) confirms she was discharged under the provisions of National Guard Regulation 600-200, paragraph 6-35d(4) for failure to attend IET (Phase I and Phase II) within 24 months. Her service was uncharacterized, and she was assigned Reenlistment Eligibility Code 3.

17. On 11 September 2024, the ABCMR staff requested that the applicant provide medical documents to support her medical issues. She was advised that she could contact the doctor that diagnosed her or her Veterans Affairs regional office for assistance. She did not respond.

18. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

19. 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, the Army Aeromedical Resource Office (AERO), and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting a change in her separation authority. She states in part:

"... the applicant concurrently participated in the Reserve Officer Training Corps (ROTC) and served as a Simultaneous Membership Program (SMP) member in the National Guard. This error can be attributed to a misunderstanding or oversight regarding the applicant's unique situation of engaging in both ROTC and the National Guard simultaneously.

Considering the distinct commitments and training requirements associated with ROTC, the applicant had no intention of attending Initial Entry Training (IET) within the specified 24-month timeframe.

The discharge reason inaccurately suggests a failure to fulfill obligations that were not applicable due to the concurrent ROTC commitment. A crucial contributing factor to the error in the records is the absence of information reflecting the applicant's medical discharge from ROTC. This significant detail was not considered when determining the discharge reason in the National Guard records. The medical discharge from ROTC is a valid and documented circumstance that should influence the characterization of the National Guard discharge."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. Her Report of Separation and Record of Service (NGB Form 22) shows she enlisted in the Pennsylvania (PAARNG) on 17 October 2019 and received an uncharacterized discharge on 10 August 2023 under the provisions of paragraph 6-35d(4) of NGR 600-200, Enlisted Personnel Management (31 July 2009): Failure to attend IET (phase I or phase II) within 24 months. The NGB Form 22 shows he had not completed basic combat training (BCT).

d. While a member of the PAARNG, the applicant was in the Simultaneous Membership Program (SMP). This program allows Soldiers to be a part of both the Army National Guard and their college's ROTC program. The immediate benefits are being able to use the tuition assistance of the GI Bill after a year of service in the Guard or Reserves. Qualifying for up to 100% tuition with the Guaranteed Reserve Forces Duty (GRFD) scholarship is the major financial benefit of this program. Cadets participate in monthly unit training with the Reserves or National Guard one weekend a month and get paid to drill once a month with their Guard unit. Cadets must attend Army Basic Combat Training and join the Guard or Reserves.

e. Paragraphs 3c(2)(a) and 3c(2) (page 4) of the applicant's Army Senior Reserve Officers' Training Corps(ROTC) Scholarship Cadet Contract (DA Form 597-3) states the cadet will return to control of their component if disenrolled from their ROTC program:

(a) If I am an MS1/freshman and I am disenrolled from the ROTC Program for any reason, I may be returned to active duty for the time not served on my original active-duty enlistment when I was separated to accept the ROTC scholarship. If I have less than one year remaining on my original active duty enlistment and am not returned to active duty, I may be required to repay scholarship funds expended on my behalf.

(b) If I am in the ROTC program beyond the MS1/freshman year and am disenrolled, I may be returned to active duty or I may be involuntarily ordered to active duty as stipulated in paragraph 6 of this contract. In case of personal hardship, I may request return to active duty in my enlisted status to serve out the time remaining on my original active-duty enlistment contract instead of the active-duty obligation stipulated in paragraph 6 of this contract.”

f. Paragraph 5a of DA 597-3 states the former cadet agrees to serve on active duty if the ROTC program is not completed:

“I AGREE TO SERVE ON ENLISTED ACTIVE DUTY. Under the terms of this contract, the Secretary of the Army or his or her designee, may order me to active duty as an enlisted soldier, if I am qualified, for a period of not more than four (4) years if I fail to complete the ROTC program. If I am disenrolled after the point of obligation, I may be ordered to active duty for one of the periods listed in paragraph 6 below based upon the year during which my disenrollment was initiated;”

g. In a 23 November 2021 memorandum from the Commanding General of the United States Army Cadet Command and Fort Knox, the applicant was informed he was disenrolling her from the ROTC program for disqualifying behavioral health conditions and that her debt was being waived:

“After careful review of your case, you are hereby disenrolled and will be discharged from the ROTC Program under the provisions of Army Regulation 145-1, Senior Reserve Officers’ Training Corps Program: Organization, Administration, and Training, paragraph 3-43a(5), July 1996. Disenrollment is due to disqualifying medical conditions, major depressive disorder and eating disorder. Your disenrollment for disqualifying medical conditions is not due to a failure to disclose.

The total amount of Federal funds spent in support of your education is \$31,487.00. The debt is being waived under the authority of the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) memorandum, dated 20 December 2019.

Pursuant to this disenrollment, you are ineligible to commission or enlist in the Armed Forces because it has been determined that you no longer meet the medical qualifications under Army Regulation 40-501, Standards of Medical Fitness.

h. While ineligible to enlist, she was already a member of the PAARNG, and subsequent orders published by the PAARNG show she was assigned to a PAARNG unit following disenrollment.

i. On 18 January 2023, her company commander informed her of his initiation of action to separate her under provisions in chapter 8 of AR 135-178, Entry Level Performance and Conduct: "The reason(s) for my proposed action is/are: Failing to become MOS qualified within 24 hours of enlistment. I am recommending that upon separation your characterization of service be: "UNCHARACTERIZED" description of service."

j. The applicant was subsequently counseled on her pending involuntary separation and agreed without comment on 19 February 2023.

k. No medical documentation was submitted with the application and there are no contemporaneous encounters in the EMR or MEDCHART. Her medical problem list in the EMR contains one behavioral health condition – "Eating disorder in remission." She is not registered with the VA.

l. ROTC Cadets are not eligible for DES processing, and Cadets in the SMP are only eligible if the injured during military training. Paragraph 4-2c of AR 635–40, Physical Evaluation for Retention, Retirement, or Separation (19 January 2017):

"Reserve Officers' Training Corps cadets are not eligible for processing through the DES, even if injured during training. Cadets who are in a RC [Reserve Component] Simultaneous Membership Program are the exception, and are eligible for duty-related DES processing if injured in training."

m. There is no evidence the applicant's behavioral health condition(s) were secondary to a duty-incurred military training injury.

n. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET). There are two phases - Basic Combat Training (BCT) and AIT. Because the applicant did not complete BCT, he was in an entry level status at the time of his discharge and so received an uncharacterized discharge. This type of discharge does not attempt to characterize service as good or bad.

o. It is the opinion of the Agency Medical Advisor that neither a referral of her case to the DES nor a change in her separation authority is warranted.

BOARD DISCUSSION:

1. The Board determined 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.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. Upgrade/Reason for Separation: Deny. The evidence shows the applicant failed to complete initial entry training within 24 months of her enlistment in the ARNG. As a result, the State ARNG separated her under the provisions of NGR 600-200, paragraph 6 35d(4) for failure to attend IET (Phase I and Phase II) within 24 months. Her service was uncharacterized. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. For the reserve components, it also includes discharges prior to completing initial entry training (IET).

b. Disability separation: Deny. The Board reviewed and agreed with the medical reviewer's determination that by regulation (AR 635-40), ROTC Cadets are not eligible for disability evaluation system processing, and Cadets in the SMP are only eligible if the injured during military training. The medical review found, and the Board agreed that there is no evidence the applicant's behavioral health condition(s) were secondary to a duty-incurred military training injury.

c. Debt remission: No Action. According to the available evidence, the applicant acknowledged and agreed that once she became obligated and then later disenrolled from the ROTC program, she would be subject to reimburse the U.S. Government through repayment of an amount of money plus interest, equal to the entire amount of financial assistance paid by the U.S. for her advanced education from the commencement of the contractual agreement to the date of her disenrollment. The available evidence shows the debt was waived under the authority of the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) memorandum, dated 20 December 2019.

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.

■

■ ■

■

■

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 (USC), 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. Title 10, USC, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.

3. Title 10, USC, Section 2005 (Advanced Education Assistance: Active Duty Agreement; Reimbursement Requirements), provides that the Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree:

- a. To complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement.
- b. That if such person failed to complete the education requirements specified in the agreement, such person would serve on active duty for a period specified in the agreement (usually a four-year enlistment at the grade of E-1, in a MOS at the needs of the Army)
- c. That if such person does not complete the period of active duty specified in the agreement, or does not fulfill any term or condition prescribed, such person shall be subject to the repayment provisions of Title 37 USC, section 303a(e); and
- d. To such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

4. 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.

- a. 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.

- b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

5. Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. An honorable characterization of service is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Service will be described as uncharacterized if separation processing is initiated while a Soldier is in an entry level status, except when the Secretary of the Army, or the Secretary's designated representative, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of military duty.

6. Army Regulation 145-1 (Senior ROTC Program, Organization, Administration and Training) provides that a scholarship cadet may be disenrolled only by the Commanding General, ROTC Cadet Command. The Commanding General, ROTC Cadet Command, is the only authority for discharge of scholarship cadets. ROTC cadets normally will be honorably discharged on the date of disenrollment from the ROTC program, except those ordered to active duty under the terms of their ROTC contract. If not academically enrolled, the cadet will be ordered to active duty 60 days from date of notification of active duty.

a. Cadets assigned to USAR Control Group (ROTC) may be discharged or separated for the convenience of the Government for termination of a scholarship.

b. Cadets assigned to USAR Control Group (ROTC), who are not ordered to active duty or pending such an order and has no previous military service, or who has not completed a basic training course, will be discharged. The effective date of discharge or transfer will be the date of disenrollment from the ROTC.

c. Scholarship students may be required to repay all or part of their scholarship financial assistance.

d. Paragraph 10-2 (Disenrollment Criteria) subparagraph (b.) provides that when cadets are found to be in breach of their service agreements, under the terms of such contracts their obligation to the Army may be satisfied through enlisted active-duty service or through recoupment of the cost of advanced educational assistance provided by the Army.

7. Army Regulation 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.

8. National Guard Regulation 600-7 (Selected Reserve Incentive Programs) governs incentive policies, procedures, and eligibility criteria for persons entering into an incentive agreement at the time of enlistment, affiliation, reenlistment, extension, commission or appointment into the ARNG. Paragraph 1-26a(1) provides for termination without recoupment when a Soldier's discharge is due to injury or illness that occurred or was detected while assigned in a Troop Program Unit status. Reason for medical discharge must not be a result of Soldier's own misconduct. Termination effective date is ARNG date of discharge.

9. National Guard Regulation 600-200 (Enlisted Personnel Management) provides for 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 the separation of a Soldier from the ARNG is a function of State military authorities in accordance with State laws and regulations.

a. Paragraph 6-35c(5) provides for separation for Soldiers not medically qualified under procurement medical fitness standards.

b. Paragraph 6-35d(4) provides for separation for failure to attend IET within 24 months.

10. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised post-traumatic stress disorder (PTSD) criteria, detailed medical considerations, and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

12. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

13. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//