

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 August 2025

DOCKET NUMBER: AR20240007117

APPLICANT REQUESTS: through counsel –

- Remission, cancellation, or to waive his debt in the amount of \$222,521.46, including all interest which has accumulated
- Correction of his records to reflect a "medical discharge" vice exceeding Army Body Composition Program (ABCP) standards

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

- Enclosure 1 – DD Form 149 (Application for Correction of Military Record) with Counsel's Brief outlining and detailing the applicant's request; in part, the briefing is described below
- Enclosure 2 – Power of Attorney dated 25 August 2022, designating the law firm of [REDACTED] PLLC to serve as his attorneys in all matters relating to and/or arising out of the applicant's service with the U.S. Military Academy (USMA)
- Enclosure 3 – Defense Finance and Accounting Service (DFAS) documents dated in January and February 2024 stating DFAS was unable to setup a proposed payment plan because one or more of the required documents were not attached to the DFAS ticket, and needed physical or digital signatures
- Enclosure 4 – Applicant's personal statement, wherein, he states in part:
 - In October 2016, he had a sexual harassment allegation filed against him by a female member of his company
 - In April of 2017, he was finally able to tell his side of the story during an administrative hearing and was rightfully cleared of all wrongdoing; all accusations were dismissed
 - The sexual harassment process damaged him, and he began to drink alcohol; after the hearing he was left with so much depression, fear, and anxiety
 - When he entered his senior year, his drinking was completely out of control
 - He had suffered a severe foot injury over the summer which had made it nearly impossible for him to keep up with the physical demands of West Point
 - He also got reprimanded by a teacher for being drunk in class, and also got a brigade board for being drunk on duty, both of these events should have sent

- him for a medical evaluation, especially being that he was already on the ABCP
- His last drink was on 17 March 2019
 - In April 2020, he received a letter telling him to report to the nearest recruiting station to be enlisted in the Army in order to serve his commitment
 - Months later he received a letter stating that he was ineligible to serve because of ABCP requirements
 - The next communication he would receive, over a year later, would be his letter from DFAS requesting payment of nearly a quarter million dollars for his education expenses
- Enclosure 5 – Electronic medical records showing the applicant's medical complaints, diagnosis, prognosis, and history; the documents will be reviewed by the Army Review Boards Agency medical staff
 - Enclosure 6 – Separation documents, showing in part:
 - On 10 January 2018, the applicant was enrolled in the ABCP; he was informed to read the Army Weight Management Guide, informed of requirements and standards, and he may request a medical examination; he elected "Self-directed program (attach program plan)"
 - On 17 January 2018, the applicant indicated that he understood his responsibilities to achieve body fat standards and elected not to request a medical examination
 - On 16 January 2019, the Tactical Officer, Company F1 recommended the applicant be separated based on his failure of the ABCP under paragraph 3-12(b)(1) and (2) of Army Regulation 600-9 (The Army Body Composition Program); the Tactical Officer (TO) stated:
 - Not only has the applicant failed according to the ABCP standards, but he has also exhibited a lack of performance that indicates he does not have the potential for retention at the Academy nor commissioning as an officer in the United States Army
 - This also merits consideration for Separation with recoupment, since the applicant cannot achieve the basic Army standards and does not demonstrate the motivation and resilience necessary to be able to perform as a Soldier in the United States Army
 - The applicant should be separated from the USMA for not being able to meet standards on the Army Physical Fitness Test (APFT) and the Indoor Obstacle Course Test (IOCT)

- The TO described and outlined the applicant's ABCP failures and substandard performance (APFT and IOCT)
- The applicant was counseled on multiple occasions regarding the ABCP and his noncompliance with the ABCP; he was informed he may be separated from the USMA based noncompliance
- On 29 January 2019, the Commandant of Cadets formally notified the applicant that he was being considered for separation from the USMA for failing to achieve and maintain the Army weight standards; the applicant was informed of his right to legal counsel, and he may submit a written response
- On 8 February 2019, email communication states, the applicant did not submit any paperwork or statement in response to his separation notification
- On 21 February 2019, the applicant was notified that he was facing separation from the USMA, and as a result of his possible separation he was notified of the potential recoupment of educational expenses incurred during his attendance at USMA
- On 4 March 2019, the applicant acknowledged receipt of the notification of potential debt owed to the U.S. Government for the cost of his education while attending the USMA, and elected to dispute the validity of the debt and he desired to submit statements, testimony, or evidence
- The USMA, Chief, Legal Assistance also disputed the validity of the debt and requested the applicant be provided with the materials utilized to calculate his \$221,730.98 debt
- On 9 April 2019, the USMA, Superintendent recommended the applicant be separated from the USMA, and be transferred to U.S. Army Reserve for three (3) years, and ordered to active duty for 3 years in the grade of E-4, in accordance with AR 612-205 (Appointment and Separation of Service Academy Attendees), Table 3, Rule 7
- The Superintendent recommended the applicant be enlisted in the active Army pursuant to Department of Defense Directive [Instruction] 1322.22, Subject: Military Service Academies, which states that active duty service is the primary means of reimbursement for education
- In the event the applicant does not complete his years of active service, he should be held responsible for repaying a proportionate amount of his education costs based on the remaining time not served
- The applicant will receive a separation physical examination that meets all of the requirements of Department of Defense Instruction (DODI) 6040.46 and Headquarters, Department of the Army Executive Order 162-15, attachment 3, and paragraph 3

- Enclosure 7 – DFAS ticket dated 22 September 2022, showing the applicant's counsel requested to dispute the applicant's debt and requested contact information to send the dispute

FACTS:

1. Counsel states, in part:

- Request to remit the applicant's debt in the amount of \$222,521.46, including all interest which has accumulated; the debt is excessive given the underlying circumstances leading to his discharge
- At the time of the issue that led to the applicant's separation, he was struggling deeply with adjustment disorder with depressed mood, which led to alcohol dependence after being falsely accused of sexual assault
- Despite these obvious issues, he was never referred to behavioral health; if the applicant was referred to behavioral health, he would have been considered for medical discharge based on his symptoms
- Instead, he was separated due to exceeding ABCP standards, which was undoubtedly a byproduct of his deteriorating mental health and physical injury
- The applicant should have been medically discharged from the Army, and thus not subject to recoupment cost of his education
- Additionally, even after the USMA failed to medically discharge an unfit Cadet, the Army failed to allow the applicant to perform duty service as an enlisted Soldier in lieu of recoupment, and option that was available to the applicant
- Nevertheless, even after his discharge, he was ordered to enlist in the active duty component of the Army; he complied with this order by showing up at a recruiting station, only to be told he must get into ABCP standards within a short time period before enlisting
- It was during this short time that he received the debt notification from this office
- Saddling the applicant with this excessive debt does not serve the best interests of the United States, especially when considering the applicant should have been discharged under medical circumstances
- The applicant arrived at West Point in May 2015
- In the fall semester of his sophomore year, his experience began to change drastically
- A Criminal Investigative Division investigation began into whether the applicant had sexually harassed and/or assaulted another West Point Cadet
- A misconduct hearing was recommended where the applicant was not allowed to be represented by counsel; this created an extremely stressful and high-pressure environment that contributed significantly to the applicant's future alcohol and mental health issues

- In April of 2017, the applicant successfully defended himself against all accusations at the misconduct hearing; he tried to put the experience behind him, but he could not and developed symptoms of adjustment disorder with depressed mood
- To cope with his symptoms the applicant turned to alcohol; as he moved into his senior year, it became worse, and he drank alcohol every single day
- The applicant was 73 pounds overweight and enrolled in the ABCP in January 2018; he continued to show unsatisfactory progress through November 2018
- The applicant was never command referred to behavioral health
- On 17 March 2019, the applicant had his last alcoholic drink; Ms. C_ noted the applicant reported his drinking out of control while in his senior year
- Prior to his treatment in the rehabilitation facility, the applicant had been notified of a recommendation for separation based on ABCP failure
- On 29 January 2019, the applicant was formally notified of separation considerations by the Commandant of Cadets
- In April 2019, while the applicant was in an in-patient rehabilitation facility, the Superintendent of USMA recommended he be separated for exceeding ABCP standard in accordance with AR 600-9 (The ABCP)
- In April 2020, the applicant received a letter from the Army ordering him to report to the nearest recruiting station for enlisted active duty in lieu of recoupment
- One year later, in June 2022, the applicant received a letter from DFAS notifying him of the debt now in question; through counsel he disputed the debt, and DFAS informed the applicant they would not remit the debt and closed his ticket
- The applicant's failure was undoubtedly caused by false accusations of sexual assault, which led to his mental health condition causing substance abuse
- Since the applicant's separation, he has managed to take control of his life; he has remained sober for nearly four years, and he continues to seek treatment for his service-connected injuries and conditions
- Even with his pain, he was still willing to enlist in the Army to honor his commitment; however, the Army was not willing to notify him properly or help him enlist
- The excessive debt for a Cadet who spent nearly four years at the USMA is an injustice, and the applicant and counsel respectfully request his debt be ruled invalid

2. The entire brief by counsel can be reviewed and considered within the tabbed supporting documents and enclosures.

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

- He completed the Oath of Allegiance (USMA Form 5-50), which states, in pertinent part, he agreed to complete the course of instruction at the USMA; and

- If he failed to complete the course of instruction of the USMA, breach his service agreement as defined in paragraph 1.g.(4), Statement of Policies, on the next page, or decline to accept an appointment as a commissioned officer, he will serve on active duty as specified in paragraphs 1.b. through 1.f., which are contained in the Statement of Policies on the next page
 - If he voluntarily fails, or because of misconduct fail, to complete the period of active duty specified in paragraphs 1.b., c., d., or e. above, "he will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided me"
 - As the unserved portion of active duty bears to the total period of active duty he agreed to serve
 - If he is obligated to reimburse the United States for the cost of his advanced education, any subsequent enlistment in an Armed Service will not relieve him of this debt
 - On 29 June 2015, he entered the USMA as a Cadet
 - On 10 April 2020, the applicant was honorably released from the USMA and ordered to active duty in another status; he completed 4 years, 9 months, and 10 days net active service this period; DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in item:
 - 9 (Command to Which Transferred) – USAR Control Group (Individual Ready Reserve)
 - 25 (Separation Authority) – AR 150-1 (Organization, Administration, and Operation)
 - 28 (Narrative Reason for Separation) – Exceeding ABCP Standards
 - On 27 February 2023, Order Number 4083750 promoted the applicant to rank/grade of private/E-2, effective 28 February 2023
4. On 27 November 2024, the U.S. Army Human Resources Command (AHRC), Chief, Incentives Pay Branch, provided an advisory opinion for this case and stated:
- a. This is in response to a request for advisory opinion regarding a remission or cancellation of indebtedness for the applicant. Their files indicate the applicant never submitted a request for remission or cancellation to AHRC for adjudication in accordance with AR 600-4 and DA PAM 600-34. Therefore, this office is unable to provide an advisory opinion on whether a relief of debt should or should not occur.

b. On 14 May 2024, Headquarters, Department of the Army, G-1 notified AHRC that because this is considered an education debt, the applicant is eligible to submit his request for a deferment to DFAS for resolution. More information can be obtained at <https://www.dfas.mil/debtandclaims/militarydebts/educationdebt/>.

5. On 17 March 2025, the USMA, Staff Judge Advocate (SJA) provided an advisory opinion for this case and stated, in part:

a. On or about 29 June 2015, the applicant reported to USMA for Reception Day (RDay), executed the enclosed agreement to serve in accordance with Title 10, USC, section 7448, and began the course of instruction. The applicant entered the Academy from a civilian status.

b. The applicant attended USMA from June 2015 to May 2019. During that time, the applicant demonstrated a pattern of substandard performance in the physical program. Since reporting to USMA, the applicant failed to successfully complete the IOCT and never scored higher than C- on the APFT. The applicant's tactical officer noted that the applicant's high muscle mass contributed to difficulties maintaining body composition standards and physical agility throughout his time as a cadet. However, the applicant was given ample opportunities and assistance to improve. Physical injuries also contributed to the applicant's substandard performance, however, the applicant continued to struggle with physical fitness requirements after the injuries were resolved.

c. On 9 March 2017, during the applicant's third-class year, the applicant appeared before an Investigating Officer (IO) at a misconduct hearing into allegations of sexual misconduct occurring on or about 31 October 2016. The allegations of sexual misconduct included abusive sexual contact and indecent viewing in violation of AR 210-26, paragraph 6-8. The IO found the allegations of sexual misconduct were not supported by a preponderance of the evidence and no further action was taken.

d. In or around December 2018, the applicant sought and received behavioral health care and treatment from the Substance Use Disorder Clinical Care for low-grade depressive symptoms and alcohol dependence. The applicant's medical records state that the applicant identified his experience related to the aforementioned misconduct hearing, a family issue involving his uncle committing a crime and being institutionalized for mental illness, and a recent break up with his girlfriend as contributors to his depressive symptoms. "The applicant's medical records also note that he grew up in a drinking culture and had been drinking since he was 16. Of note, the application states that the applicant never used alcohol prior to his time at USMA and attributes his alcohol dependence only to his experiences related to the misconduct hearing." See application and Applicant's medical records.

e. On or about 29 January 2019, during the applicant's first-class year, the

Commandant determined that the applicant failed to make satisfactory progress in a weight control program and notified the applicant that separation proceedings were being considered in accordance with AR 210-26, paragraph 6-24. The applicant was provided with a copy of all documentation forming the basis for the determination of failure to make satisfactory progress in a weight control program. The applicant was notified of his right to submit a response explaining any extenuating circumstances or special matters that may influence the final decision in his case. The applicant was also notified of his right to consult with an attorney assigned to the Office of Staff Judge Advocate and given an opportunity to do so.

f. On or about 9 May 2019, the applicant completed a separation history and physical examination in compliance with HQDA Executive Order 162-15, attachment 3, paragraph 3, and DoDI 6040.46. The health care provider found that the applicant was "qualified for service" and met medical retention standards pursuant to AR 40-501, Chapter 3. The examining health care provider annotated that the applicant was being treated for alcohol dependence and depression, noting that the applicant was doing well with treatment.

g. Effective 15 May 2019, the applicant was placed in an administrative leave of absence status pending final action on his separation in accordance with Title 10, USC, section 702(b) and AR 210-26.

h. On or about 10 April 2020, the Deputy Assistant Secretary of the Army (Military Personnel) (DASA(MP)) approved the recommendation for separation for failure to make satisfactory progress in the ABCP and directed that the applicant be transferred to the U.S. Army Reserve and concurrently ordered to active duty for three years in the grade of E-4. The DASA(MP) memorandum directed that in the event the applicant was ineligible for enlisted service, or failed to complete his three-year active duty service, he would be required to reimburse the government the cost of his educational benefits in the amount determined by DFAS pursuant to Title 10, USC, section 2005, DoDI 1322.22, and the applicant's agreement to serve.

i. The applicant asserts that shortly after being notified of DASA(MP)'s decision to approve separation and direct active duty service, the applicant reported to the nearest recruiting station and was advised that his medical treatment and weight "may serve as a hindrance" to enlisting. The applicant further asserts that months after his initial contact with a recruiter, he received a letter stating he was ineligible to serve due to ABCP requirements. See applicant's personal statement.

j. The application asserts that the applicant should have been medically discharged from USMA and not subject to recoument as he was medically unfit due to ongoing struggles with "adjustment disorder with depressed mood, which led to alcohol

dependence after being falsely accused of sexual assault." The application further asserts that the Army failed to allow the applicant to fulfill his military service obligation through active duty service, and that monetary recoupment is not in the best interest of the United States.

k. The application for correction of military record states that the applicant has exhausted all administrative remedies as DFAS denied the applicant's request for relief. Of note, the applicant's supporting evidence shows that the DFAS ticket was closed due to an administrative error with instructions for resubmission. On or about 28 February 2024, DFAS notified the applicant that the Voluntary Repayment/Financial Hardship Application (VRA/FHA) submitted with his request requires a physical or digital signature at the bottom of the form for the documents to be accepted. DFAS provided the applicant with a new copy of the form to be completed and resubmitted to DFAS for consideration. The DFAS notification submitted with the application was not a denial of the applicant's request.

l. On or about 9 May 2019, the applicant completed a separation history and physical examination. The health care provider found that the applicant was "qualified for service" and met medical retention standards pursuant to AR 40-501, Chapter 3. The examining health care provider annotated that the applicant was being treated for alcohol dependence and depression, noting that the applicant was responding well to treatment. See Enclosure 5 (Separation History and Physical Examination). As such, a medical discharge was not appropriate at the time of separation. Failure to make satisfactory progress in a weight control program was the appropriate basis for separation and the applicant may be subject to monetary recoupment.

j. The applicant was found to be qualified for service and in compliance with medical retention standards at the time of separation. Therefore, a medical discharge was not appropriate under AR 210-26. Furthermore, waiver or cancellation of any part of the indebtedness of a cadet to the United States for education costs commensurate with time spent at the Academy is reserved to the Secretary of the Army or his/her designee. As such, the requested administrative relief is outside the scope of USMA's authority.

6. The entire USMA, Staff Judge Advocate (SJA) advisory opinion can be reviewed within the tabbed supporting documents.

7. On 24 March 2025, the applicant's legal counsel responded to the USMA SJA advisory opinion and stated:

a. As you are aware, our firm is retained to represent the applicant regarding his request for the following: (1) Remittance of his debt to the United States in the amount of \$222,521.46; and (2) Change the separation authority to "Condition Not Amounting to Disability", "Secretarial Authority", or a similar neutral reason for discharge. We offer the

following comments for your consideration on behalf of the applicant. The Advisory Opinion (AO), issued on 17 March 2025, recommends denial of the applicant's application on the basis that he was ineligible to be separated under AR 40-501 because he met medical retention standards as of May 2019, and the applicant did not exhaust all administrative remedies by applying to the Secretary of the Army for waiver of his debt. The AO should be disregarded because there is evidence the applicant was unfit for duty as of September 2019, and this Board is the only venue for the applicant to change his discharge to a medical discharge.

b. When the applicant was separated from the USMA, he was medically unfit to serve and the determination by the AO that he was medically fit was arbitrary and capricious. Under the Supreme Court Standard, "normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."

c. Here, not only did the applicant not meet medical retention standards, as argued in his original application, but the AO's recommendation is based on inaccurate information. The applicant's separation physical was on 31 August 2019 not in May 2019. Furthermore, the medical examiner, Dr. M_C_K_, did find that the applicant's depression and adjustment disorder did "not [meet] Medical Retention Determination Point" meaning the applicant's adjustment disorder and depression was unfitting as of 19 September 2019 when the applicant was discharged from the USMA.

d. The AO inaccurately relies on a medical examination from May 2019, instead of the applicant's separation physical from August and September 2019. Therefore, there is sufficient evidence that the applicant was unfit for duty and should have received a medical discharge from the USMA instead of an administrative discharge for ABCP failure.

e. This Board should set aside the AO because there is evidence of errors and injustices. First, the AO incorrectly cites a medical record from May 2019 when a more accurate reflection of the applicant's injuries are correctly reflected in August and September 2019 records showing he is medically unfit for service. Secondly, the applicant rightfully applied to this Board and exhausted all administrative remedies. As such, the applicant respectfully requests this Board to change his military records to reflect a medical separation and remit his debt in the amount of \$222,521.46.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting medical disability discharge versus his current narrative reason for separation of exceeding Army Body Composition Program (ABCP) standards. In addition, he is requesting remission, cancellation, or to waive his debt in the amount of \$222,521.46, including all interest which has accumulated. This opine will narrowly focus on his request for medical disability based on a behavioral health condition and defer the remaining request to the Board.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- Applicant entered the USMA as a Cadet on 29 June 2015.
- Per the USMA Staff Judge Advocate's (SJA) advisory opinion for this case, applicant attended USMA from June 2015 to May 2019. During that time, he demonstrated a pattern of substandard performance in the physical program. He failed to successfully complete the IOCT and never scored higher than C- on the APFT. The applicant's tactical officer noted his high muscle mass contributed to difficulties maintaining body composition standards and physical agility throughout his time as a cadet. However, the applicant was given ample opportunities and assistance to improve. Physical injuries contributed to the applicant's substandard performance, however, the applicant continued to struggle with physical fitness requirements after the injuries were resolved.
- On 9 March 2017, during the applicant's third-class year, the applicant appeared before an Investigating Officer (IO) at a misconduct hearing into allegations of sexual misconduct occurring on or about 31 October 2016. The allegations of sexual misconduct included abusive sexual contact and indecent viewing in violation of AR 210-26, paragraph 6-8. The IO found the allegations of sexual misconduct were not supported by a preponderance of the evidence and no further action was taken.
- On 10 April 2020, the applicant was honorably released from the USMA and ordered to active duty in another status; he completed 4 years, 9 months, and 10 days net active service this period. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows separation authority AR 150-1 and narrative reason for separation as Exceeding ABCP Standards.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states in October 2016, he had a sexual harassment allegation filed against him by a female member of his company. In April of 2017, he was finally able to tell his side of the story during an administrative hearing and was rightfully cleared of all wrongdoing; all accusations were dismissed. The sexual harassment process damaged him and left him with so much depression, fear, and

anxiety; and he began to drink alcohol. When he entered his senior year, his drinking was completely out of control. In addition, he had suffered a severe foot injury over the summer which had made it nearly impossible for him to keep up with the physical demands of West Point. He got reprimanded by a teacher for being drunk in class and got a brigade board for being drunk on duty, both of these events should have sent him for a medical evaluation, especially being that he was already on the ABCP. His last drink was on 17 March 2019. In April 2020, he received a letter telling him to report to the nearest recruiting station to be enlisted in the Army in order to serve his commitment; months later he received a letter stating that he was ineligible to serve because of ABCP requirements. The next communication he received, over a year later, was a letter from DFAS requesting payment of nearly a quarter million dollars for his education expenses.

d. The electronic medical records available for review show on 3 December 2018, the applicant presented to behavioral health services due to complaints of depressive and anxious symptoms, along with insomnia related to an accusation of sexual assault, his uncle being institutionalized following commission of a crime, and the breakup of a relationship. Contrary to the applicant's assertion of not consuming alcohol prior to the USMA, during this encounter, he reported growing up in a drinking culture and having used alcohol since age 16. He shared significant alcohol use since turning age 21, including drinking a few times a week, typically having 7 to 10 drinks, and occasionally blacking out. However, he further reported not having had a drink in approximately a month at that time, going to AA twice a week, and expressed his intention to remain sober. The applicant was diagnosed with Adjustment Disorder with Depressed Mood, provided medication to address his sleep issues, a follow-up on 7 December 2018, and monitoring to determine the possible need for a referral to ASAP. The applicant was seen once again in February 2019 and reported inconsistent use of his medication and concern about possibly being separated from the USMA. During the course of treatment, he was started on an antidepressant medication. On 26 March 2019, he was referred by his treating provider for a SUDCC evaluation and reported a history of consuming alcohol since age 14, with his family; he met diagnostic criteria for Alcohol Dependence. He was recommended for enrollment and provided SUDCC treatment. Beginning on 8 April 2019, he was provided inpatient rehabilitation for stabilization and treatment of his Alcohol Dependence. A note dated 10 April 2019, shows a case review occurred and the applicant's referral for inpatient treatment was both medically and command referred. Upon completion of inpatient rehabilitation, he continued receiving SUDCC treatment with the applicant participating in 13 SUDCC encounters between March 2019 to May 2019. A note dated 14 May 2019, states following his discharged from inpatient treatment of his alcohol dependence, the applicant reported being "a changed person". He was sober and his mood had dramatically improved, he had significantly benefited from medication and therapy. He reported going on administrative separation starting the following day and anticipated being allowed to return to the USMA in the Fall. On 19 September 2019, the applicant participated in a physical

examination for the purpose of separation. He was found qualified for service with “no significant defects”, he met Army retention criteria, and his PULHES was “111111”. A follow-up phone session, post-discharge on 4 May 2020, indicates the applicant’s diagnosis as Alcohol Dependence, in remission, indicating he was sober. Overall, the applicant’s available service record does not contain a DA Form 3349 (Physical Profile), nor does it evidence:

- he was issued a permanent physical profile rating
- he suffered from a medical condition, physical or mental, that affected his ability to perform the duties required by his MOS and/or grade or rendered him unfit for military service
- he was diagnosed with a medical condition that warranted his entry into the Army Physical Disability Evaluation System (PDES)
- he was diagnosed with a condition that failed retention standards and/or was unfitting.

e. The VA’s Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not participated or sought behavioral health services via the VA.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence, at this time, to support a referral to the IDES process based on his behavioral health condition. Although the applicant was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Dependence while in service, an Adjustment Disorder is a transient reaction to stress and would not qualify as the basis for medical separation processing. In addition, his Alcohol Dependence was in full remission and would not serve as the basis for a medical discharge. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

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 Board reviewed and concurred with the behavioral health advisory opinion which stated "Although the applicant was diagnosed with Adjustment Disorder with Depressed Mood and Alcohol Dependence while in service, an Adjustment Disorder is a transient reaction to stress and would not qualify as the basis for medical separation processing. In addition, his Alcohol Dependence was in full remission and would not serve as the basis for a medical discharge. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has not been provided to determine otherwise." The Board also noted the applicant applied to DFAS and his packet was incomplete. Based on this the Board determined relief was not warranted and denied 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. AR 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

3. AR 600-9 (The Army Body Composition Program) establishes policies and procedures for the implementation of the Army Body Composition Program (ABCP). Chapter 3 (ABCP) states in:

a. Paragraph 3–10 (Medical evaluation), a medical evaluation is required when: (1) Requested by the unit commander. (2) Requested by the Soldier (at own expense for Reserve Component (RC) Soldier not on active duty). (3) Soldier is being considered for separation for failure to make satisfactory progress in the ABCP (applies to Active Component and RC on active duty only). (4) Soldier is within 6 months of expiration term of service after the initiation of a reenlistment bar for failure to make satisfactory progress in the ABCP.

b. The health care provider will conduct a medical evaluation to ensure the Soldier can participate in the ABCP and rule out any underlying medical condition that may be a direct cause of significant weight gain or directly inhibit weight or body fat loss. If an underlying medical condition is found, the following applies: (1) If the medical condition is temporary and can be controlled with medication or other medical treatment and meets the retention standards of AR 40–501 (Standards of Medical Fitness), the health care provider will — (a) Initiate treatment. (b) In accordance with AR 40–501, prepare a temporary profile in the e-Profile application within the Medical Operational Data System (MODS) listing any functional limitations that would prevent the Soldier from fully participating in the ABCP. (c) Complete the memorandum (figure 3–7) and return to the commander for enrollment in the ABCP. (d) Refer to appropriate specialist for nutritional and exercise counseling. (e) RC personnel not on active duty may choose to self-refer to their personal physician (at their own expense) for further evaluation or treatment.

c. If the medical condition does not meet medical retention standards of AR 40–501 (see medical fitness standards for retention and separation, including retirement) the health care provider will refer the Soldier to a medical evaluation board.

d. Paragraph 3–11b (Temporary medical condition), Soldiers found to have a temporary medical condition that directly causes weight gain or prevents weight or body fat loss will have up to 6 months from the initial medical evaluation date to undergo treatment to resolve the medical condition. The medical specialty physician may extend the time period up to 12 months if it is determined more time is needed to resolve the medical condition. During this time, the Soldier will participate in the ABCP, to include initiation of a DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)), nutrition counseling, and monthly body fat assessment, but will not be penalized for failing to show progress. However, if the Soldier meets the body fat standard during this timeframe, he or she will be removed from the ABCP.

e. Paragraph 3-12b (Program failure), a Soldier enrolled in the ABCP is considered to be failing the program if: (1) He or she exhibits less than satisfactory progress on two consecutive monthly ABCP assessments; or (2) After 6 months in the ABCP he or she still exceeds body fat standards and exhibits less than satisfactory progress for three or more (nonconsecutive) monthly ABCP assessments.

f. Paragraph 3-12c, when a Soldier has failed the program, the commander will request a medical evaluation. (1) If the medical evaluation finds the Soldier has a medical condition that does not meet medical retention standards of AR 40–501 (see medical fitness standards for retention and separation, including retirement) the Soldier will be processed in accordance with AR 40–501 (see chapter 3, disposition). (2) If the Soldier is found to have a "temporary" underlying medical condition that directly causes weight gain or prevents weight or body fat loss, the commander will follow the requirement in paragraph 3-11b. (3) If the medical evaluation finds no underlying medical condition, then the commander will initiate separation action, bar to reenlistment, or involuntary transfer to the Individual Ready Reserve (IRR) for RC Soldiers in accordance with AR 140–10.

g. The commander or supervisor will inform the Soldier, in writing, that a bar to reenlistment, separation action, or a transfer to the IRR is being initiated.

4. AR 40-501 (Standards of Medical Fitness) governs medical fitness standards for enlistment, induction, and appointment, including officer procurement programs; medical fitness standards for retention and separation, including retirement. Paragraph 3-3 (Disposition) states, Soldiers with disqualifying conditions listed in this chapter who do not meet the required medical standards will be referred to the Disability Evaluation System (DES) in accordance with AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation).

a. A Soldier will not be referred to the DES because of impairments that were known to exist at the time of acceptance into the Army, after appropriate waiver was obtained, that have remained essentially the same in degree of severity, and do not meet the definition of a disqualifying medical condition or physical defect as in paragraph 3-1.

b. Profiling healthcare providers who identify a Soldier with a medical condition(s) listed in this chapter should initiate a permanent profile at the time of identification, which will prompt a DES referral. Profiling healthcare providers should not defer initiating a DES referral until the Soldier is being processed for non-disability retirement. Many of the conditions listed in this chapter (for example, arthritis in paragraph 3-23) fall below retention standards only if the condition has precluded or prevented successful performance of duty as described in paragraph 3-1.

5. AR 210-26 (United States Military Academy) provides policy and procedures for the general governance and operation of the USMA. Paragraph 6-24 (Failure to make satisfactory progress in a weight control program) states:

a. A cadet, with no underlying or associated disease process, who fails to make satisfactory progress in a weight control program, or following removal from a weight control program, exceeds the screening table weight and the body fat standard contained in AR 600-9, may be separated from the Military Academy.

b. Prior to initiation of separation action, the Commandant will prepare a letter that states that separation proceedings are being considered. All documentation that provides the basis for the determination of failure to make satisfactory progress in a weight control program will be attached to this letter. The Commandant will consider the Cadet's response to this letter prior to forwarding a recommendation for separation to the Superintendent.

6. AR 150-1 (Organization, Administration, and Operation) provides policy and procedures for the command and control of the United States Military Academy, the United States Military Academy Preparatory School, and the West Point Military Reservation.

a. Paragraph 7-6 (Mental disorder) states, a cadet who exhibits a mental disorder not constituting a physical disability (for example, a personality disorder) that makes retention undesirable may be separated from USMA if the mental disorder (not amounting to disability allowing medical separation) — (1) Interferes with assignment to or the performance of duty. (2) Is so severe that the cadet's ability to function effectively in the military environment is significantly impaired. The diagnosis of a mental disorder must have been established by a psychiatrist, doctoral-level clinical psychologist, or doctoral-level clinical social worker privileged to conduct mental health evaluations for

DoD components. Mental health evaluations will be conducted by such persons in accordance with DoDI 6490.04.

b. Paragraph 7-8 (Failure to make satisfactory progress in a body composition program) states, a cadet with no underlying or associated disease or disorder who fails to make satisfactory progress in a body composition program, or who, following removal from a body composition program, exceeds the screening table weight and the body fat standard contained in AR 600–9, may be separated from USMA. Prior to initiation of separation action, the Commandant of Cadets will prepare a letter which states that separation is being considered. All documentation that provides the basis for the determination of failure to make satisfactory progress in a body composition program will be attached to this letter. The Commandant will consider the cadet's response to this letter prior to forwarding a recommendation for disposition to the Superintendent, USMA.

c. Paragraph 8-2 (Delegation of separation and discharge authority) provides that all separation actions forwarded to the Office of the Assistant Secretary of the Army (M&RA) for approval will include: a copy of the cadet's USMA service agreement; the cadet's previous enlistment contracts, if applicable; a copy of the cadet's academic transcript; the USMA G-8's calculation of the cost of advanced education assistance provided to the cadet; a record of appropriate notification of debt; the underlying separation action; the cadet's matters for consideration; a DD Form 2808 (Report of Medical Examination); a DD Form 2807-1 (Report of Medical History) and DD Form 2807-2 (Accessions Medical History Report); and a legal review. If a separation health assessment documents a medically disqualifying condition, the USMA surgeon must inform the cadet of the condition and make a recommendation as to whether the condition should be waived for enlistment.

d. Paragraph 8-10 (Breach of service agreement and reimbursement of educational costs) states, Cadets who resign from USMA, or who are separated from USMA under the procedures contained in table 8-1, will be deemed to have breached their service agreement. A cadet who fails to complete the period of active duty service specified by the Secretary of the Army in the cadet's agreement to serve may be required to reimburse the Government for educational costs pursuant to Title 10, USC, section 2005 (Advanced education assistance: active duty agreement; reimbursement requirements) and implementing regulations. If the Secretary of the Army determines that such active duty service is not in the best interests of the Army, the cadet will be considered to have failed to complete the period of active duty and may be required to reimburse the government for educational costs.

e. Paragraph 8-12 (Cadet processing for active duty service) states, upon the publishing orders separating the cadet from USMA and ordering him or her to active duty, the cadet will meet with an Army recruiter within 30 days. The cadet will coordinate

with the recruiter to ship to training within 90 days of enlisting. Cadets who do not attempt to ship to training in a timely manner, as stated in this paragraph, may be ordered to reimburse their educational expenses in lieu of active duty service.

7. DODI Number 1322.22, Subject: Military Service Academies, 24 September 2015, provides that, it is Department of Defense policy, pursuant to chapters 753, 853, and 953 of Title 10, USC (Reference (g)), and consistent with this instruction, that (1) Active Duty service is the primary means of reimbursement for education. (2) Cadets and midshipmen disenrolling or those disenrolled after the beginning of the third academic year from a Service academy normally will be called to active duty in enlisted status, if fit for service.

8. 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 — (1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement; (2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement; (3) 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 pursuant to paragraph (4), such person shall be subject to the repayment provisions of section 303a(e) or 373 of title 37; and (4) to such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

9. 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 Army.

a. The Assistant Secretary of the Army (Manpower and Reserve Affairs (M&RA)) will — (1) Consider applications that are not within the authority of the Deputy Chief of Staff, G-1 or the Commanding General, U.S. Army Human Resources Command. The application packets must show unusual circumstances within the scope of the authority of the Secretary of the Army (see Title 10, USC, section 7837 and Title 32, USC, 710(c)) or concern a debt amount greater than or equal to \$100,000.

b. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. In accordance with the authority of Title 10, USC, section 7837 and/or Title 32, USC, section 710(c), 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.

c. Paragraph 13 (Determining injustice or hardship) states, the ASA (M&RA) will follow the following standards in this regulation to determine injustice or hardship on the basis of the information received. The following factors will be considered: (1) The Army's policy in the area of indebtedness to the Army (for example, excess leave or basic allowance for housing while living in Government housing). (2) The Soldier's awareness of policy and procedures. Past or present military occupational specialty, rank, years of service, and prior experience are taken into consideration. (3) The Soldier's monthly income and expenses. (4) The Soldier's contribution to the indebtedness to the Army by not having the situation corrected. (5) Additional income or assets (for example, spouse's salary, savings account, and bonds).

10. Title 10, USC, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.

//NOTHING FOLLOWS//