

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 April 2024

DOCKET NUMBER: AR20220009188

APPLICANT REQUESTS: in effect, entitlement to basic allowance for housing (BAH) for the period of 16 January 2012 through 15 January 2015, while serving in the Army National Guard under Title 10, U.S. Code, in an Active Guard Reserve (AGR) status in Romania.

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 in effect, he is requesting correction of a DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters). He was not paid the correct amount of BAH for the period of 16 January 2012 to 15 January 2015 while assigned to a unit in Romania.
3. The applicant requested assistance from Congress in the processing of this case. The following documents were presented and are available for the Board's consideration:
 - a. An email from a Congresswoman's office, dated 5 October 2022, which states the applicant received a message stating the Board may take up to 18 months to complete the process. He stated he had already attempted the process two years prior, but the case did not make any progress. The original DD Form 149 was presented for the Board's consideration.
 - b. A forwarded email, dated 26 September 2022, from the Congresswoman's office, which states, in effect, the case has been passed between federal agencies for the last five months and the author wanted to ensure action was possible. The email included a

timeline of events regarding the applicant's case. The entire email is available for the Board's consideration.

c. The applicant's original DD Form 149, dated 30 September 2020, wherein the applicant requested an audit, final adjudication, and payment of his entitlements which was not paid while he was mobilized. He was a Title 10 AGR National Guard (ARNG) Soldier and as an M-Day Soldier he served in Romania. He believes he is owed BAH for the period he was there. The Defense Finance and Accounting Service (DFAS) found he is owed BAH back pay; however they cannot take action without an adjudication.

d. A letter from DFAS to the Congresswoman's office, dated 23 May 2022, which states DFAS has jurisdiction over matters pertaining to military pay, finance and accounting policy, and system support. As a courtesy, the inquiry was forwarded to the Director, DFAS, for appropriate action.

e. A letter from DFAS to the Congresswoman's office, dated 13 June 2022, which states in effect:

(1) They were unable to process the applicant's request for back pay. His DA Form 5960 reflected that he was assigned adequate living quarters, therefore, he was not authorized BAH at the single rate for the requested timeframe.

(2) They are not authorized to adjust the applicant's record without official documentation from the branch of service. He should contact his command to review his DA Form 5960 to determine whether changes should be made to authorize BAH.

f. Orders 327-108, published [REDACTED] National Guard, dated 23 November 2011, which ordered the applicant to Active Duty for Operational Support to Stuttgart, Germany from 16 January 2012 through 12 July 2012. These orders were amended on:

- 29 November 2011, by changing the period of active duty to end on 30 September 2012
- 20 January 2012, by changing his report location from Stuttgart, Germany to Bucharest, Romania
- 25 January 2012, by adding temporary duty in-route is authorized
- 29 September 2012, by changing the period of active duty to end on 30 November 2012

g. Orders NG-286-001, published by National Guard Bureau (NGB), dated 12 October 2012 ordered the applicant to Active Duty for Operational Support to Stuttgart,

Germany from 1 December 2012 through 1 December 2013. These orders were amended on 26 November 2013 by changing the end date to 5 December 2013.

h. Orders A-11-315972, published by US Army Human Resources Command (HRC), dated 27 November 2013, ordered the applicant to Active Duty for Operational Support to Bucharest, Romania, from 6 December 2013 for a period of 363 days ending on 3 December 2014. These orders were amended on 21 October 2014 changing the tour length to 405 days and the end date to 14 January 2015.

i. A Digital Privacy Release Form signed by the applicant states in effect:

(1) The applicant is an ARNG Special Forces Soldier. He was mobilized from January 2012 through January 2015 to work in Bucharest, Romania, as the Special Operations Command Europe Liaison to the Romanian Special Operations.

(2) During this time period, he was paying a mortgage on his home in [REDACTED] and was entitled home of record housing allowance. He received partial housing allowance during this time period, but he is still owed over \$40,000.

(3) In 2019, Fort Bragg finance was willing to pay the balance but needed DFAS's approval. He has been working this case since 2014 and DFAS still has not resolved this. He would like to get it resolved before he retired from the military on 31 January 2023.

5. The applicant's service record contains the following documents:

a. An NGB Form 337 (Oaths of Office), dated 26 July 1997 shows the applicant took the oath of office in the rank of second lieutenant in the ARNG.

b. A DD Form 214 (Certificate of Release or Discharge from Active Duty), which shows he entered active duty on 16 January 2012 and was honorably released on 14 January 2015. He had completed 2 years, 11 months, and 29 days of net active service this period. He had service in Romania from 27 January 2012 through 14 January 2015.

c. An NGB Form 22 (National Guard Report of Separation and Record of Service) shows the applicant entered the ARNG on 13 April 1992 and was honorably retired on 1 February 2023. He had completed 30 years, 9 months, and 19 days of net service this period.

d. The applicant's service record is void of information regarding where he lived while he was stationed in Romania or if military housing was unavailable.

6. On 14 February 2023, the Chief, Military Pay Branch of the Office of the Deputy Chief of Staff, G-1, provided an advisory opinion for the Board's consideration, which states, in effect:

a. After careful review of the information provided for the applicant, they recommend the Board disapprove the applicant's request for administrative relief to pay his BAH while performing duty in Romania.

b. The applicant does not provide enough information for G-1 to provide the Board an opinion that a change to his military record is warranted; however, his servicing finance office can provide him an entitlements determination on his eligibility to receive housing allowance.

c. Department of Defense policy in the Department of Defense Financial Management Regulation Volume 7A, Chapter 26 paragraph 10.5 reads that a Reserve Component member called to active duty without the authority to ship household goods to the duty station at government expense will receive a housing allowance based on the member's primary residence. If shipment of household goods is authorized, the housing allowance is based on the duty station.

d. The applicant did not provide the DA Form 5960 in question, a detailed explanation of the circumstances requiring the change to the DA Form 5960, and any LESs proving that he did not receive a housing allowance, while performing duty in Romania in his application.

7. On 17 February 2023, the advisory opinion was provided to the applicant to allow him the opportunity to respond.

8. On 22 March 2023, the applicant responded through his Congresswoman's office. The email from the Congresswoman's office states, in effect, see the attached cover letter from the Congresswoman as the supporting documentation that was requested by the Board. The entire email is available for the Board's consideration. With the rebuttal the applicant provided the following documents for the Board's consideration:

a. A self-authored letter, dated 22 March 2023, states, in effect:

(1) The applicant was an ARNG Special Forces Officer mobilized to Bucharest, Romania from 16 January 2012 through 15 January 2015. During this period, he was paying a mortgage for his home in [REDACTED]

(2) A retired Master Sergeant (MSG), a career US Air Force Finance noncommissioned officer (NCO) assigned to Special Operations Command Europe

(SOCEUR), decided to challenge the Housing Allowance Regulation, and attempted to get him paid for his home of record (HOR) BAH.

(3) The justification was that the Housing Allowance Regulation allowed for mobilized Reserve Component Soldiers to be paid HOR BAH while outside the Continental US (OCONUS). It creates a financial burden on a service member to pay a mortgage while supporting OCONUS named operations.

(4) A retired Sergeant First Class (SFC), a career US Army Finance NCO, was able to build the packet with Fort Bragg, [REDACTED] Finance for payment of entitlements. DFAS declined to pay the entitlements.

(5) DFAS directed him to petition the Board, which he did. Eighteen months later, this path did not produce any results, which is why he resorted to a Congressional inquiry.

b. The Congressional inquiry, dated 22 March 2023, has been previously discussed in the ROP and is available for the Board's consideration.

c. DA Forms 5960, dated 6 December 2013, show the applicant was single, his duty location was Bucharest, Romania, the Basic Allowance for Quarters type was without dependents, and his quarters were adequate.

d. A DA Form 4187 (Personnel Action), dated 22 November 2019, shows the applicant is requesting cost of living allowance for his duty in Bucharest, Romania from 8 February 2012 through 14 January 2015. The request was signed by the commander/authorized representative on 22 November 2019.

e. DA Forms 2142 (Pay Inquiry), dated 13 August 2019, show the applicant was requesting his pay to be audited for the periods of 16 January 2012 through 14 January 2015 during his Title 10 activation. This document reflects the following information:

(1) He received BAH for home of record zip code [REDACTED] (Reading, [REDACTED]) from 16 January 2012 to 15 October 2012.

(2) From 16 October 2012 to 1 December 2013, he received BAH type 2 (\$1,212.00) for home of record zip code [REDACTED]

(3) From 6 December 2013 to 14 January 2015, he received the barracks rate at \$26.70 for HOR zip code [REDACTED]

(4) He also believes that he was not paid his entitlements (base pay, basic allowance for subsistence, and BAH) for the period of 2 December 2013 through 5 December 2013.

f. An entitlements chart shows what the BAH without dependents entitlement was what he received for 2012, 2013, and 2014. The entire chart is available for the Board's consideration.

g. A memorandum for the Military Pay Section, dated 26 January 2012, shows the applicant submitted his active duty orders for the period of 16 January 2012 through 30 September 2012.

h. His orders to active duty, which were previously discussed in the ROP and are available for the Board's consideration.

i. He provides documents showing his mortgage information for his home in [REDACTED].

j. LESs from 15 February 2012 through 15 January 2015, which shows the applicant's entitlements and debts while serving in Romania. The entire LESs are available for the Board's consideration.

k. A letter from the retired Air Force MSG, states in effect:

(1) He was assigned to SOCEUR from 2012 through 2015. During that time, he discovered the applicant was not being paid BAH for his HOR.

(2) The applicant was an ARNG Soldier mobilized in support of SOCEUR with duty in Bucharest, Romania. Because he was in the ARNG and owned a home with a mortgage, he was entitled to HOR BAH.

(3) The MSG decided to challenge the Housing Allowance Regulation and attempted to get the applicant paid for his HOR BAH. They began working with DFAS in Stuttgart, Germany in July 2014. They continued to work to solve this case until the applicant completed his 3 year SOCEUR assignment in January 2015. They were not able to solve the matter with DFAS.

l. A letter from the retired SFC US Army Finance NCO, dated 23 March 2023, states in effect:

(1) He was a career US Army Finance NCO. He was assigned to G-3 Special Operations Division from July 2018 to March 2022 as the G-3 Finance and Comptroller NCO.

(2) During this time, he was informed the applicant was not paid BAH for his HOR from his three year assignment in Romania. The applicant was an ARNG Soldier mobilized in support of SOCEUR with duty in Bucharest, Romania. Because the applicant was in the ARNG and owned a home with a mortgage, he was entitled to HOR BAH.

(3) The SFC attempted to get the applicant paid for his HOR BAH. They began working the case with DFAS, Fort Bragg, [REDACTED] in November 2019 who decided the correct solution was to pay the applicant the balance of his BAH from his time in Romania. They submitted the packet to DFAS Indianapolis and that is where the case stopped. DFAS Indianapolis did not action the request any further. They were not able to solve this matter with DFAS and the applicant was never paid the balance of his BAH.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.
2. Notwithstanding the recommendation of the advisory official, a majority of the Board found the applicant provided sufficient evidence, specifically Leave and Earnings Statements, to confirm that there were discrepancies in the amount of BAH he was paid based on his residence in CONUS while he was serving on active duty in Europe. A majority of the Board determined the evidence supports correction of his record to show he was approved to receive BAH at the without dependents rate based on his residence in zip code 19460 for the period 16 January 2012 through 14 January 2015. As a result of this correction, he should be paid BAH at the applicable rate less any BAH already received during the period in question.
3. The member in the minority concurred with the conclusion of the advisory official that the applicant has provided insufficient evidence to confirm that an error or injustice occurred in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	█	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing he was approved to receive BAH at the without dependents rate based on his residence in zip code 19460 for the period 16 January 2012 through 14 January 2015. As a result of this correction, he should be paid BAH at the applicable rate less any BAH already received during the period in question.

8/27/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. ALARACT Message 384/2011 states in paragraph:

a. (4). Intent: To ensure continued mission success, and maximize efficiencies while balancing the needs of RC Soldiers and their families and, to implement new policy guidance regarding use of PCS for RC Soldiers serving on active duty in excess of 180 days.

b. (5). Policy: Effective 1 June 2011, RC Soldiers will no longer be authorized the option of contingency operations flat rate per diem (Temporary Change of Station-55 percent) tours. PCS travel and transportation allowances must be paid to all RC Soldiers and retiree recall Soldiers on voluntary duty for more than 180 days at any one location.

3. Title 37, USC, section 403c (BAH) Outside the United States, states:

a. The Secretary of Defense (SECDEF) may prescribe an overseas BAH for a member of a uniformed service who is on duty outside of the United States. The Secretary shall establish the BAH under this subsection on the basis of housing costs in the overseas area in which the member is assigned.

b. So long as a member of a uniformed service retains uninterrupted eligibility to receive a BAH in an overseas area and the actual monthly cost of housing for the member is not reduced, the monthly amount of the allowance in an area outside the United States may not be reduced as a result of changes in housing costs in the area or the promotion of the member.

4. Title 37, USC, section 403(a)(1) states, "a member of a uniformed service who is entitled to basic pay is entitled to a BAH."

5. Title 37, USC, section 403g(1) (Reserve Members) states, a member of a RC without dependents who is called or ordered to active duty, in support of a CONOP, or for a period of more than 30 days under Title 10, USC, section 688(a) in support of a CONOP or for a period of more than 30 days, may not be denied a BAH if, because of that call or order, the member is unable to continue to occupy a residence:

a. Which is maintained as the primary residence of the member at the time of the call or order; and

b. Which is owned by the member or for which the member is responsible for rental payments.

6. Title 37, USC, section 403g(2) states, The Secretary concerned may provide BAH to a member described in paragraph (1) at a monthly rate equal to the rate of the BAH for housing established under subsection (b) or the overseas basic allowance for housing established under subsection (c), whichever applies to the location at which the member

is serving, for members in the same grade at that location without dependents. The member may receive both a BAH under paragraph (1) and under this paragraph for the same month, but may not receive the portion of the allowance authorized under section 474 of this title, if any, for lodging expenses if a BAH for housing is provided under this paragraph.

7. Title 37, USC, section 403g(4) states, the rate of BAH to be paid to the following members of a RC shall be equal to the rate in effect for similarly situated members of a regular component of the uniformed services:

- a. A member who is called or ordered to active duty for a period of more than 30 days.

- b. A member who is called or ordered to active duty for a period of 30 days or less in support of a contingency operation.

8. Title 37, USC, section 403g(5) states, The SECDEF shall establish a rate of BAH to be paid to a member of a RC while the member serves on active duty under a call or order to active duty specifying a period of 30 days or less, unless the call or order to active duty is in support of a contingency operation.

9. Joint Travel Regulations (JTR), Section 1001, Table 10-1 states:

Table 10-1. Types of Housing Allowances

Allowance	Description
BAH	Paid for housing in the United States. The BAH rate is based on median housing costs and is paid independently of a Service member's actual housing costs.
BAH Differential (BAH-Diff)	Paid to a Service member assigned to single-type Government quarters and who qualifies for a BAH solely due to paying sufficient child support.
Partial Housing Allowance (BAH-Partial)	Paid to offset the raise that was reallocated from basic pay to housing between 1980 and 1981. It is paid when a Service member without a dependent is assigned to single-type quarters, or is on either field or sea duty, and not authorized to receive a BAH or an OHA. BAH-Partial is not authorized during proceed time, leave en route, and travel time on a permanent change of station (PCS) move unless the member is assigned to single type Government quarters and not authorized BAH or OHA. The rate is fixed from those years and does not change.
Transit Housing Allowance (BAH-Transit)	Paid while a Service member is in travel or leave status between permanent duty stations (PDS), provided the Service member is not assigned Government quarters. The BAH-Transit rate is paid during proceed time and authorized delays en route, including a TDY en route.
BAH for Reserve Component (RC) Member (BAH-RC)	Paid when authorized for an RC member called or ordered to active duty for 30 or fewer days, except when called to active duty for a contingency. When an RC member is called to active duty for a contingency, even for tours of 30 or fewer days, he or she is authorized the BAH or OHA rate. The Secretary of Defense establishes BAH-RC rates.
OHA	Paid monthly to help offset housing expenses for a Service member or dependent authorized to live in private-sector leased or owned housing at an assigned overseas location outside the United States. OHA is based on cost reimbursement. The amount of OHA paid considers factors, such as whether the housing is shared, the appropriate utilities (see Section 1005), and whether the Service member owns or rents the housing. OHA cannot be paid if there is no rent or purchase expense for housing.
Family Separation Housing (FSH)	Paid to a Service member with a dependent for added housing expenses resulting from one of the following: <ul style="list-style-type: none"> • Separation from the dependent when a Service member is assigned to a PDS OCONUS. • An assignment in the CONUS when dependent travel is delayed or restricted.

10. JTR, chapter 10, section 100906(7). RC Member states, "Called or Ordered to Active Duty for Contingency:

a. An RC member called or ordered to active duty in support of a contingency operation is authorized BAH or OHA based on the primary residence beginning on the first day of active duty. This rate is authorized even for duty of 30 or fewer days.

b. This rate continues for the duration of the tour unless the RC member is authorized PCS HHG transportation, in which case the rate for the PDS would apply on the day the RC member reports to the PDS."

11. The JTR, Appendix A defines primary residence, stating, "For an RC member ordered to active duty, the primary residence is the dwelling (e.g., house, townhouse, apartment, condominium, mobile home, houseboat, vessel) where the RC member resides before being ordered to active duty."

12. Army Regulation 420-1 (Army Facilities Management), paragraph 3-6.b. (1), states "PP [permanent party] personnel are entitled to housing allowances to secure private

housing in the civilian community if Government housing is not provided."

//NOTHING FOLLOWS//