

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230000204

APPLICANT REQUESTS: reconsideration of his previous requests for reimbursement and full return of \$62,000 debt that was incorrectly taken from his pay by the Defense Finance and Accounting Service (DFAS).

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

- Reconsideration Letter
- Multiple Travel Vouchers and Sub-Vouchers/Amended Travel Vouchers and Sub-Vouchers
- Utility Bills (Cable, Electric, Gas, Water, Phone), Bank Statements, and Mortgage and Loan Documents
- Previous ABCMR Docket AR20170011346, 6 August 2019
- Extract of the Joint Travel Regulation (JTR), U-4137
- Sworn Statement (part of a U.S. Army Criminal Investigation Command Investigation)
- Memorandum for Record, Review of Titling Action Related to [Applicant]
- Email exchange with DFAS and others
- Spread Sheet listing Per Diem vs Authorized Reimbursements
- Statements from various individuals
- Self-authored Spread Sheet listing savings to Government

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number:

- AR20150008534, on 21 June 2016
- AR20170011346, on 6 August 2019

2. The applicant states the belief that he submitted fraudulent documents and amounts for unauthorized per diem reimbursement is incorrect and he has the evidence to prove it. He has attached new evidence for review and consideration. He is requesting the full return of \$62,000 that was incorrectly taken from his pay by DFAS. He has attached the

actual Travel Vouchers with receipts that were used for determining the reimbursement amounts from DFAS as required by the Joint Travel Regulation (JTR).

a. At no time did he ever intend or attempt to defraud DFAS, by the way of submitting fraudulent reimbursement amounts to DFAS while using the Travel Voucher DD Form 1351-2. In addition, in June 2007 while working with his Finance NCO (Noncommissioned Officer), he filed Amended Travel Vouchers. The reason for the amendment was Finance nor DFAS could not answer if TV and house cleaning services were reimbursable as they are with other rentals (those amounts were removed) and the Travel Vouchers were updated from the Single Receipt. The amended Travel Vouchers put him into contact with DFAS Agent [REDACTED]. His Travel Vouchers were provided to his Finance NCO, Staff Sergeant (SSG) [REDACTED] who submitted them to DFAS. Included were copies of the utility bills, bank statements and a spread sheet.

b. He has put a spread sheet together listing the amounts of the original travel vouchers, Amended Travel Vouchers and Per Diem rates. By purchasing a house while on TDY (temporary duty) as authorized by JTR U-4137, he saved the government \$13,644.41 in a total of 13 months. On October 30, 2008, he was cleared of any/all allegations against him, and all administrative punishments were removed from his records. Until May 22, 2012, DFAS started repayment deductions from his pay pursuant to a CID (U.S. Army Criminal Investigation Command) report that was completed on June 27, 2009. This new issue was presented to his MP (Military Police) commander and on July 11, 2012, Brigadier General (BG) [REDACTED] issued a memorandum requesting a 90 day suspense of debt actions based on multiple discrepancies.

c. Within the National Capital Region (NCR) a "Statement of Non-Availability", control # [Number] was issued to service members that were deployed to the NCR. The Finance NCOs (Agents of DFAS) were challenged with difficult DFAS TDY/lodging reimbursement issues. JTR U-4137 authorized the purchase of a home while on TDY, listing authorized reimbursements using the same Travel Voucher DD Form 1351-2. This complicated the Travel Voucher process and created additional delays with DFAS. The overwhelmed and short staffed DFAS agents were confronted with increasing complicated demands for TDY reimbursements including increasing amounts of soldiers and military units being mobilized and deployed to CONUS (continental United States) and OCONUS (Outside continental United States) in support of the Global War on Terrorism (GWOT). Combined with DFAS's understaffing this created a backlog of Travel Vouchers resulting in excessive delays with TDY reimbursements. The corrective actions (Single Receipt) were initiated prior to his JTR U-4137 purchase by Finance NCOs (Agents of DFAS) to expedite the TDY reimbursement process and was supported by JAG (Judge Advocate General) officers. The single receipt contained all the reimbursements added together as one amount vs multiple additional documents and submitted with the DD Form 1351-2. Their actions were not to defraud DFAS but to implement a corrective plan to assist a disabled system and an understaffed DFAS

procedure. Again, to simplify and expedite DFAS reimbursements in a timely manner while also taking care of soldiers.

d. Sadly to say, a system that was designed to help service members later revealed a few had taken advantage of it. Not in his case. After many CID-led investigations were launched into the possibility of TDY Fraud, this caused finance and JAG representatives to become fearful of reprisal for their prior advice and directions that were given. Resulting in some not forthcoming about complete conversations with interviewers. As revealed in the September 30, 2021, Record of Proceedings on page 5, para 5. (a. & b.) where the Finance NCO (paragraph a.) acknowledges his conversation with himself and the JAG Officer. Then in (paragraph b.) the JAG officer states: "He was told by finance they didn't know what he (being him) was talking about." But then states "he told the applicant (him) he did not see a problem with submitting rental documents if it was the same amount as the TDY purchase bills. "The JAG Officer contradicts himself and is not representing the truth.

e. His actions reflect the advice he received from HQDA Finance NCOs (Agents of DFAS) and JAG Officers (on two separate TDY deployments 2004-2005 & 2007) regarding the submission process for a TDY purchase (JTR U-4137) and reimbursement using the required DD Form 1351-2. When he was informed of the process for the purchase reimbursement I asked our Subject Matter Experts, the JAG section, about it. He was told it is an acceptable corrective action.

f. The remainder of his statement, specifically, the section titled sequence of events, is available for the Board to review.

3. Review of the applicant's service records shows:

a. Having had prior enlisted service in the Army National Guard (ARNG), the applicant was appointed as a Reserve commissioned officer in the ARNG, second lieutenant (Military Police), on 30 August 1986. He transferred to the U.S. Army Reserve (USAR) on 9 September 1997.

b. He was ordered to active duty in support of Operation Enduring Freedom during the period 28 October 2002 to 15 August 2005. He was promoted to LTC (O-5) on 8 May 2006. He was also ordered to active duty during the period 3 July 2007 to 28 November 2007.

c. On 16 November 2007, the applicant accepted nonjudicial punishment under Article 15 of the Uniform Code of Military Justice. The DA Form 2627 (with a continuation sheet) shows Major General [REDACTED] Commanding General (CG), USAMDW, imposed NJP against the applicant for his misconduct under the UCMJ, Article 132 (two specifications), for the purpose of obtaining the payment of claims

against the United States in an amount greater than \$500.00. It shows he did, at or near Arlington, VA, on divers occasions between:

(1) on or about 12 November 2004 and on or about 2 July 2005, use certain papers, to wit: a lease agreement, which said paper he then knew contained statements that he had leased [Address], [REDACTED], for \$4,540 per month, \$5,100 per month, and \$4,500 per month, which statements were false and fraudulent in that he owned [Address], [REDACTED] and was then known by him to be false and fraudulent.

(2) on or about 15 February 2007 and on or about 28 February 2007, use certain papers, to wit: a lease agreement, which said paper he then knew contained statements that he had leased [Address], [REDACTED] for \$4,540 per month, \$5,100 per month, and \$4,500 per month, which statements were false and fraudulent in that he owned [Address], [REDACTED] and was then known by him to be false and fraudulent.

d. The DA Form 2627 shows, on 2 November 2007, the applicant was advised of his rights and was afforded the opportunity to consult with counsel; did not demand a trial by court-martial; requested a hearing; and that he would present matters in defense, extenuation, and/or mitigation would be presented.

e. During the hearing, the imposing officer found the applicant guilty and punished him with forfeiture of \$1,500.00 pay per month for one month, suspended, to be automatically remitted if not vacated before 16 December 2007; and to receive a reprimand. The imposing officer directed the original DA Form 2627 be filed in the permanent section of the applicant's official military personnel file.

f. The General Officer Memorandum of Reprimand reads:

(1) While serving on active duty at the Army Operations Center, Pentagon, he filed travel vouchers with false information. He was in a temporary duty status that required you to submit monthly travel vouchers. Between November 2004 and July 2005, you submitted documents with his vouchers indicating that you rented 119 [Address] in [REDACTED] and requested reimbursement for your "rent." In February 2007 he again filed vouchers claiming that he "rented" his townhouse. To any Government official reviewing his submissions, it would have appeared that he was legitimately renting his home after having negotiated the rent at arm's length. In fact, he owned [Address].

(2) He is a senior officer in the Army and are expected to do what is right. Instead, he chose to act in a manner that is unbecoming of an officer. As a field grade officer and military police officer, he dishonored his rank and his branch. He had a duty to abide by the applicable regulations and spend the Government's money prudently. Instead, he acted as both landlord and tenant in a sham transaction and misled the

government as to the nature of his ownership interest in [Address]. He set his own rent, and therefore decided what his own reimbursable expenses were. His actions are unacceptable and is hereby reprimanded.

(3) This is a punitive reprimand imposed pursuant to Article 15, Uniform Code of Military Justice. In accordance with Army Regulation (AR) 27-10 (Military Justice), paragraph 3-19(b)(9)(d), this reprimand is listed as an attachment to the DA Form 2627.

4. Army Review Boards Agency AGDRB Case Number AR20120008023, dated 19 July 2012, shows the Acting Deputy Assistant Secretary of the Army (Review Boards), confirmed the AGDRB reviewed the request for a grade determination pertaining to the applicant and directed he would be placed on the retired list in the grade of O-4 (major) when he became eligible and applied for retirement. A review of the AGDRB case documents shows, in pertinent part:

a. On 25 April 2012, Major SLR, Trial Counsel, Special Assistant United States Attorney (SAUSA), USAR Command (USARC), contacted the AGDRB to request an early AGDRB pertaining to the applicant based on a DA Form 2627 he received in 2007. She stated the DA Form 2627 was supposed to have been filed in his OMPF, but it wasn't. She added that the ROI (Report of Investigation) was voluminous and involved another officer whose case the AGDRB had acted upon.

b. On 12 October 2007, Major [REDACTED], Trial Counsel, U.S. Army Military District of Washington (USAMDW), Fort Lesley J. McNair, DC, provided the Commander, Headquarters Battalion, U.S. Army, Fort Myer, VA, a memorandum to brief the chain of command on the ROI pertaining to the applicant.

c. USAMDW, Fort Lesley J. McNair, DC, memorandum, dated 16 November 2007, shows the CG, USAMDW, reprimanded the applicant for filing travel vouchers with false information related to renting a property that he owned in [REDACTED]. The memorandum was issued as a punitive reprimand and as an attachment to the NJP.

5. On 11 June 2012, DFAS-In advised the applicant by letter of a debt with a balance due the U.S. Government of \$57,310.01.

6. On 8 August 2012, DFAS-IN sent the applicant a letter in response to his inquiry concerning his debt amount. A DFAS research and an audit of the claim determined that the debt amount of \$57,310.01 is valid. DFAS received credible information that indicated the applicant's claims during the period November 2004 through July 2005 and February 2007 through May 2007 were paid based on fraudulent information. Specifically, the applicant owned the property during that period, and he submitted receipts indicating he was renting the lodging from a company for which he was listed as the company contact. DFAS concluded that these facts show he actually stayed in

property that he owned while he was on TDY, yet he claimed reimbursement on his travel using false receipts. Thus, all payments made were erroneous payments and must be recouped. Also, an additional \$4,450.00 erroneous payment for the month of October 2004 was discovered during the audit, increasing his actual debt amount to \$61,760.01. The director cited the Comptroller General decisions upon which the collection action was based, and the applicant was informed of appeal options.

7. On 15 April 2014, Soldier Readiness Center, Joint Base Lewis-McChord, WA, Published Orders 105-0002, honorably separated the applicant on 11 June 2014 based on physical disability (70%) and placed him on the retired list effective 12 June 2014 in the permanent grade of rank of LTC (O-5).

8. On 19 August 2014, Joint Force Headquarters, ■■■ ARNG, published Orders 231-1080, separating the applicant from the ■■■ ARNG, in the rank of LTC, effective 11 June 2014, and transferred him to the USAR Control Group (Retired).

9. On 21 August 2014, the National Guard Bureau published Special Orders Number 235 AR, withdrawing Federal recognition, effective 11 June 2014, and transferring the applicant to the USAR Control Group (Retired) in the rank of LTC).

10. On 21 June 2016, (AR20150008534), the Board considered his request to

- remove the titling action from his records and all criminal databases, including the Defense Central Index of Investigations (DCII) and the National Crime Information Center (NCIC)
- restore his retirement grade of rank of LTC
- cancel all debt associated with DFAS

a. Prior to adjudicating his case, the Board received an advisory opinion from the Compensation and Entitlements Division, Office of the Deputy Chief of Staff, G-1. The advisory official recommends disapproval of the applicant's request for cancellation of his debt and stated:

(1) The advisory official states DFAS found that the claims the applicant submitted in 2004–2005 and in 2007 were paid based on fraudulent information. Despite repeated denials from the applicant's lawyer, and his contention that the JTR is "poorly written," there is nothing to refute the determination that the applicant owned the home and was filing travel vouchers for "rent" that he paid. In addition, the advisory opinion strongly rejects the notion that the JTR is "poorly written," as it is based on law, staffed through numerous agencies, and is the foundation on which all government travel is based.

(2) The advisory official noted that counsel uses the argument of removal of the Article 15 from the applicant's record, as well as other unrelated information, as reasons that the debt should be cancelled. The official acknowledged those facts; however, he noted they do not address the fact that the evidence shows the applicant owned the home for which he was claiming to pay rent during his TDY in the [REDACTED]. He added DFAS was reasonable in its analysis that the applicant must pay his debt and there is nothing in the application to show otherwise.

b. Also prior to adjudicating his case, the Board received an advisory opinion from the Special Actions Branch, Appeals and Analysis Section, Personnel and Policy Readiness Division, NGB, Arlington, VA. The advisory official noted that the applicant's OMPF and his request to the Board confirm that he retired from military service in the rank of LTC (O-5) and that he was placed on the retired list in that rank and grade. As such, all actions pertaining to the applicant's rank and grade have been completed. The NGB added that it could not take action on matters pertaining to the titling action and cancellation of the debt and deferred to the appropriate agencies.

c. Also prior to adjudicating his case, DFAS was asked to verify information relevant to the applicant's retired grade and debt. On 24 May 2016, a DFAS official indicated the applicant was receiving retired pay in the grade of LTC. There was no record of the debt being deducted from his retired pay.

d. The Board denied his request

(1) The evidence of record shows NJP was imposed by the CG, USAMDW, based on an ROI that was carefully considered prior to the imposition of the NJP. The evidence of record shows the applicant was serving in the rank/grade of LTC when NJP was imposed against him in November 2007. The NJP authority directed the NJP be filed in the performance folder of his OMPF. The evidence of record shows (for reasons that are not clear) the Article 15 that was in his OMPF was removed on 29 September 2009 by the CAARNG.

(2) On 25 April 2012, Trial Counsel, USARC, contacted the AGDRB to request an early AGDRB pertaining to the applicant based on a DA Form 2627 he received in 2007. Trial counsel noted the DA Form 2627 was supposed to have been filed in his OMPF, but it wasn't. There is no evidence of record that shows a DA Form 2627-2 was issued to set-aside the NJP, in whole or in part.

(3) Based on the evidence of record, it appears the applicant was properly titled at the time he was cited for the offenses in question and that the investigation revealed that he did commit the offenses. There does not appear to be a case of mistaken identity in this case. As such, there is no basis to remove the applicant's name from the

title block of USACIDC records that serve to update FBI records and/or other Federal databases (e.g., DCII, NCIC, etc.).

(4) The government has an interest in maintaining the records in question. Counsel (on behalf of the applicant) has not shown through the evidence submitted with the application or the evidence of record why the information in question should not remain a matter of record. Dispositions that are exculpatory in nature (e.g., dismissal of charges, acquittal, etc.) are also filed. The applicant may contact appropriate law enforcement agencies to ensure any available official records of exculpatory information are also filed in the NCIC database.

(5) On 11 June 2012, the applicant received a demand letter from DFAS notifying him of an alleged debt in the amount of \$57,310.01 related to his permanent change of station and the USACIDC decision to title the applicant. On 29 August 2012, the amount was raised to \$61,759.81. The evidence of record shows DFAS found that the claims the applicant submitted in 2004–2005 and in 2007 were paid based on fraudulent information. There is no evidence of record that shows the applicant appealed the debt to DFAS. After a careful review of the evidence of record, there is an insufficient evidentiary basis to cancel the debt in this case.

(6) On 19 July 2012, the Acting DASA (RB) confirmed the AGDRB reviewed the request for a grade determination pertaining to the applicant and directed he would be placed on the retired list in the grade of O-4 (major) when he became eligible and applied for retirement. For reasons that are not clear, orders were subsequently issued that honorably separated the applicant on 11 June 2014 based on physical disability (70 percent) and placed him on the retired list effective 12 June 2014 in the permanent grade of rank of LTC. The evidence of record shows the applicant is receiving retired pay in the grade of rank of LTC (O-5). Despite the information provided by DFAS with respect to the retired pay grade, no action will be taken by this Board at this time.

11. On 6 August 2019 (AR20170011346), the Board reconsider the applicant's request for:

- Removal of Criminal Investigation Division (CID) titling
- Restoration of retirement rank
- Cancellation of DFAS debt and full refund of all monies paid to DFAS

a. 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. The Board also considered the information and statements provided as new evidence.

b. The Board found evidence that the applicant acted fraudulently by submitting claims for rent reimbursement instead of claims for mortgage interest for the house that he owned. He had a financial interest in getting paid sooner rather than later even if the amount was the same or similar and that there was credible information indicating that he committed a crime existed at the time he was titled. The Board found further that DFAS collected the full amount of the erroneous payments as allowed by regulation. Based upon a preponderance of the evidence, the Board determined there is insufficient evidence to amend the previous Board’s decision, finding no error or injustice.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found that, even if the applicant did not intend to or attempt to defraud the government, the fact remains that he owned a home for which he was claiming to pay rent during his TDY in the [REDACTED]. That this is not allowable is abundantly evident. The Board did not find any additional evidence or argument that would support a different decision regarding his debt than the decisions made in the previous considerations of this matter. Based on a preponderance of the evidence, the Board found the debt in question was not established in error and is not unjust.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Numbers AR20150008534, on 21 June 2016 and AR20170011346, on 6 August 2019.

2/16/2024

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. The Joint Travel Regulation (JTR) pertains to per diem, travel and transportation allowances, relocation allowances, and certain other allowances of Uniformed Service Active Duty and Reserve Component members, Department of Defense (DOD) civilian employees, and Civilians who travel using DOD funding. Chapter 4 (TDY Travel), paragraph U4137, provides that personnel who were issued orders before 1 January 2012 and had already purchased a dwelling at the TDY location before 1 January 2012 may continue to claim lodging costs related to the purchased dwelling until the expiration of the current TDY order including any extensions to that order limited to the following:

a. Purchased Residence. For those eligible (see above), allowable expenses are prorated based on the number of days in the month, rather than by the actual number of days the member occupied the residence (57 Comp. Gen. 147 (1977)), and include the monthly (1) mortgage interest; (2) property tax; and (3) utility costs actually incurred (does not include any installation and hook-up charges (e.g., electricity, natural gas, water, fuel oil, sewer charges), not to include entertainment utilities (e.g. cable, TV, telephone)).

b. Limitation. In no case may the total lodging per diem payable exceed the applicable TDY maximum locality lodging ceiling unless an Actual Expense Authorization is authorized/approved. NOTE: A member who purchased and occupied a residence at the TDY location may not be reimbursed for any cost associated with rental, purchase, or shipment of furniture.

2. Department of Defense Financial Management Regulation Volume 5, Chapter 25 paragraph 2504 states, claims shall be reviewed by the supporting DFAS Center to determine that the claim is complete as prescribed in this section and that the claim is otherwise proper for submission to the responsible settlement authority. If submission of all or a major part of the claim to the responsible settlement authority is not required, the claim shall be returned to the submitting office with advice that all or a major portion of the claim be paid locally, a citation to the regulation(s) that authorizes or provides for such payment, and a statement, if applicable, that the doubtful portion of the claim should be resubmitted.

3. Comptroller Decision B217114.7 states, accountable officers should have their liability for improperly paying fraudulent travel subsistence expense claims determined based on the actual fraudulent overpayments made. Accountable officers are strictly liable for losses of government funds under their control. The government's loss for paying fraudulent subsistence claims is the amount overpaid due to the fraud. Prior cases which included in the officer's liability non fraudulent expenses claimed for the same day as fraudulent expenses are modified.

//NOTHING FOLLOWS//