

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 March 2024

DOCKET NUMBER: AR20230000968

APPLICANT REQUESTS: in effect, remission of debt incurred as the result of a Financial Liability Investigation of Property Loss (FLIPL) and reversal of garnished wages.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record), 10 October 2022.

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, his bank account is being garnished \$200.00. He has been out of the military for 20 years and has received no proof of the damage. This garnishment should be returned.
3. A review of the applicant's service records shows:
  - a. On 4 July 1993, he enlisted in the U.S. Army Reserve following a 4-year period of active duty (AD) service.
  - b. On 27 February 2002, he enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) for a period of 4 years.
  - c. He served on AD from 20 May 2003 to 24 March 2004. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from AD and transferred to control of the 157th Field Artillery, [REDACTED] ARNG.
  - d. Orders 261-014, issued by [REDACTED] ARNG Element, Joint Force Headquarters, discharged him from the Army National Guard and as a reserve of the Army, effective on 20 August 2004.

e. His records are void of, and the applicant provided no source documentation showing debt incurred, the amount of debt incurred, or the garnishment of said debt from his account as the result of property damage. Attempts to reach the applicant were not successful.

4. On 30 August 2023, the Office of the Deputy Assistant Chief of Staff, G-4, provided ARBA an advisory opinion recommending the financial liability assessed in this case be reversed, in response to the applicant's issue. It reads in part:

a. The enclosed application for relief of financial liability for the Financial Liability Investigation of Property Loss (FLIPL) initiated against (Applicant) is returned with a recommendation that the financial liability assessed be reversed. We recommend that the Defense Financial Accounting Service (DFAS) terminate the debt and return all funds garnished and correct his records. We also recommend a review of Army Regulation 735-5 to establish a time limit on when a debt can be collected from a Soldier.

b. After a thorough review, the Office of the Deputy Chief of Staff, G-4, concluded that the unit did not follow Army policy and procedures when conducting the FLIPL process in accordance with Army Regulation 735-5 and the recommendation to hold the (Applicant) liable is not administratively sound. Our recommendation is based on the following:

(1) The (Applicant's) service obligation ended on 20 August 2004. On 10 October 2022, almost eighteen years after he left service, he received notification from DFAS that he owed a debt for damaged equipment, which occurred in 2019. In accordance with Army Regulation 735-5, paragraph 13-34, the financial liability officer will give any individual against who he/she makes a recommendation to assess financial liability, a chance to examine the Department of Defense (DD) Form 200 (Financial Liability Investigation of Property Loss) after the findings and recommendations are recorded on the DD Form 200, and the opportunity to make a rebuttal statement on their behalf. The (Applicant) never received any notification from the investigating officer.

(2) The (Applicant) did not receive notification from the approving authority that he adopted the investigating officer's recommendation. In accordance with Army Regulation AR 735-5, paragraph 13-42, before individuals are held financially liable, they must receive notice and the opportunity to exercise their rights. Notification of the respondent will be accomplished by the approving authority using a memorandum. The memorandum, with a copy of the DD Form 200 and all exhibits will be hand-delivered to the person found financially liable. If the individual is unavailable locally, the memorandum will be forwarded by certified mail, return receipt requested. The (Applicant) never received any notification from the approving authority. The (Applicant) did not have the opportunity to request a reconsideration, also outlined in

paragraphs 13-42. Submission of a request for reconsideration, a hearing, or remission or cancellation of indebtedness stops all collection action, pending a decision on the request made by the appropriate official.

(3) The (Applicant) contacted DFAS and his old unit to request information on the debt. DFAS could only provide information that the debt was due to financial liability investigation of property damage. The unit could not provide him with any paperwork, such as a DD Form 200 with all its exhibits since the DD Form 200 was no longer on file. In accordance with the National Archives and Records Administration, the unit must keep Financial Liability Investigation of Property Loss documentation for seven years when an individual is found liable.

5. On 11 September 2023, the Chief, Case Management Division, provided the applicant a copy of the advisory opinion however to give him an opportunity to submit comments, however the applicant did not respond.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is warranted.
2. The Board concurred with the conclusion of the advisory official that the available evidence indicates the applicant was unjustly deprived of all of his due process rights and, therefore, the debt established against him is also unjust. The Board determined the record should be corrected to show he incurred no financial liability related to his military service and any monies collected to satisfy the debt established against him should be returned to him.

#### BOARD VOTE:


Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 to show he incurred no financial liability related to his military service and any monies collected to satisfy the debt established against him should be returned to him.

7/23/2024

  
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. Army Regulation 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 ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is the principle that government officials properly discharged their official duties unless there is evidence showing otherwise. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
3. Army Regulation 735-5 (Property Accountability Policies), currently in effect, prescribes basic policies and procedures in accounting for Army property and accounting for lost, damaged, or destroyed Army property. It states an investigating officer's (IO) responsibility is to determine the cause and value of the loss, damage, or destruction of government property listed in the FLIPL and to determine if assessment of financial liability is warranted. Individuals may be held financially liable for the loss, damage, or destruction of government property if they were negligent or committed

willful misconduct and their negligence or willful misconduct was the proximate cause of that loss, damage, or destruction.

a. The following terms are defined:

(1) Command Responsibility. The obligation of a commander to ensure all Government property within their command is properly used and cared for, and that proper custody and safekeeping of Government property are provided. Command responsibility is inherent in command and cannot be delegated. It is evidenced by assignment to a command position at any level and includes:

(a) Ensuring the security of all property of the command, whether in use or in storage.

(b) Observing subordinates to ensure their activities contribute to the proper custody, care, use, and safekeeping of all property within the command.

(c) Enforcing all security, safety, and accounting requirements.

(d) When necessary, taking administrative or disciplinary measures.

(2) Negligence. The failure to act as a reasonably prudent person would have acted under similar circumstances. An act or omission that a reasonably prudent person would not have committed or omitted under similar circumstances and which is the proximate cause of the loss of, damage to, or destruction of government property. Failure to comply with existing laws, regulations, and/or procedures may be considered as evidence of negligence.

(3) Proximate Cause. The cause, which in a natural and continuous sequence of events unbroken by a new cause, produced the loss or damage. Without this cause, the loss or damage would not have occurred. It is further defined as the primary moving cause or the predominant cause from which the loss or damage followed as a natural, direct, and immediate consequence.

b. Paragraph 13-29 (Financial Liability Officer's Responsibility) states a financial liability officer's responsibility is to determine the cause and value of the loss or damage of government property listed on the DD Form 200 and to determine if assessment of financial liability is warranted. That determination must be determined from the facts developed during a thorough and impartial investigation. However, before beginning the investigation, the financial liability officer must have an understanding of the terms "responsibility, culpability, proximate cause, and loss"; each term impacts upon a determination of financial liability. Individuals may be held financially liable for the loss or damage of government property if they were negligent or have committed willful

misconduct and their negligence or willful misconduct is the proximate cause of that loss or damage.

c. Paragraph 13-31d states to interview and obtain statements from all individuals whose useful testimony may assist in deciding the cause of or responsibility for the loss, damage, destruction, or theft of the property listed on the DD Form 200. For losses or damages previously investigated by a board of officers, military police, or other authorized official, obtain a copy of the report or extracted information and attach it to the DD Form 200 as an exhibit.

d. Paragraph 13-34 provides before forwarding the DD Form 200 to the appointing or approving authority, the financial liability officer will give any individual, against who makes a recommendation to assess financial liability, a chance to examine the DD Form 200 after the findings and recommendations have been recorded on the DD Form 200, and the opportunity to make a rebuttal statement on their behalf.

e. Paragraph 13-42 provides guidance on notice to respondents on assessment of financial responsibility. Notification of the respondent will be accomplished by the approving authority using a memorandum. The memorandum with a copy of the DD Form 200 with all exhibits will be hand delivered to the person found financially liable. If the individual is not available locally, the memorandum will be forwarded by certified mail, return receipt requested. The memorandum will inform the individual that collection efforts will begin 30 calendar days (ARNG 60 calendar days) from the date delivered or mailed. If respondent exercises their rights, collection actions will be temporarily halted. The memorandum will provide a means for the respondent to acknowledge receipt. The memorandum will state what rights the respondent has and the time limits for exercising these rights. When a memorandum is returned indicating that the memorandum is not deliverable, the approving authority need not make further attempts to notify the individual of their rights. The time utilized in notifying respondents of approved charges of financial liability, and of their rights is not counted towards the 75 days allowed for processing the DD Form 200.

f. Paragraph 13-43 provides that when an individual has been notified that financial liability has been approved, the individual should, with the advice of legal counsel, thoroughly review the FLIPL packet provided, then decide whether to request reconsideration of the approving authority's decision. The individual should submit requests for reconsideration by memorandum through his or her immediate commander to the approving authority. The individual should submit requests for reconsideration only on the basis of legal error.

g. Paragraph 13-51 provides that the term "request for reconsideration" refers to an application to the appeal authority challenging the decision of the approving authority in

assessing financial liability. Requests for reconsideration will be submitted to the approving authority who acted on the FLIPL.

//NOTHING FOLLOWS//