

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230003822

APPLICANT REQUESTS: payment of Involuntary Separation Pay (ISP).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 5690 (Reserve Components Career Counselor Interview Record), 2 December 2022
- Orders Number 020-0001, 20 January 2023
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 4 February 2023
- DA Form 7783 (Written Service Agreement and Mandatory Disclosure Statement), 13 February 2023
- Email communication between applicant and finance office, February - March 2023

FACTS:

1. The applicant states:

a. The Final Separating Office, Tower Barracks, Germany, informed him to contact the Army Review Boards Agency (ARBA) due to no DA Form 7783, Written Service Agreement and Mandatory Disclosure Statement, being completed prior to separation from the Army. The separating office states the ISP cannot be released due to this.

b. During the clearing process he did meet with a Reserve Component (RC) counselor two months prior to separation and a DA Form 5690 was generated but no DA Form 7783. It was not until after separation that the finance office, Tower Barracks, Germany, contacted him asking for a DA Form 7783, and he submitted one on 15 February 2023. His expiration term of service was 4 February 2023. On 8 March 2023, the transition office, contacted him stating that it needed to be signed prior to separation. During the generation of final separation orders and final out appointment, no DA Form 7783 was needed to be produced or during the mandatory appointment with the RC counselor.

2. A review of the applicant's military records show the following:

a. He enlisted in the Regular Army on 21 August 2012.

b. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) show he reenlisted on:

- 3 March 2017 for 2 years
- 30 November 2018 for 2 years
- 15 June 2020 for 4 years

c. On 1 October 2021, the applicant was promoted to the rank/grade of staff sergeant (SSG)/E-6.

d. On 14 November 2022, the applicant accepted non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for disobeying a lawful order not to consume alcohol on or about 21 October 2022. His punishment consisted of reduction to the rank/grade of sergeant (SGT)/E-5, suspended; forfeiture of pay, suspended; extra duty and restriction. He did not appeal.

e. On 13 December 2022, DA Form 2627-2 (Record of Supplementary Action Under Article 15, UCMJ) shows the suspension of the punishment(s) of reduction to SGT and forfeiture of pay imposed on the applicant on 14 November 2022 were vacated. The unexecuted portions of the punishment(s) were executed. The vacation was based on the applicant disobeying a lawful order to not consume alcohol, and wrongfully consuming alcohol on or about 22 November 2022.

f. On 16 January 2023, the Department of the Army published Orders Number 0003886014.00, demoting the applicant from SSG to SGT, effective 14 November 2022.

g. On 20 January 2023, the Installation Management Command - Europe, U.S. Army Garrison Bavaria Transition Center published Orders Number 020-0001, which assigned the applicant to the Bavaria Transition Center, Germany, for transition processing with a date of discharge on 4 February 2023. The additional instructions state "Soldier is entitled to one-half separation pay IAW [in accordance with] Title 10, United States Code (USC), section 1174."

h. The applicant was honorably discharged from active duty on 4 February 2023. DD Form 214 shows he was discharged in accordance with chapter 9 of Army Regulation (AR) 635-200, Active Duty Enlisted Administrative Separation, due to alcohol rehabilitation failure. He was assigned Separation Code JPD and completed 10 years, 5 months, and 14 days net active service. In pertinent part, it also shows in:

- item 4a (Grade, Rate or Rank) – SGT
- item 6 (Reserve Obligation Termination Date) – 00000000
- item 9 (Command to Which Transferred) – N/A
- item 18 (Remarks) – "Separation Pay -- \$24,073.13" and "member is entitled to half separation pay"
- item 28 (Narrative Reason for Separation) – Alcohol Rehabilitation Failure

3. The applicant provides the following:

a. DA Form 5690 dated 2 December 2022, which explains his obligation and participation requirements. The applicant and RC career counselor signed the form.

b. DA Form 7783 dated 13 February 2023 (after his discharge), which shows the applicant signed the form and acknowledged the qualifications, requirements, and conditions to receive ISP.

c. Email communication during the period of February and March 2023, between the applicant and Tower Barracks Germany Finance Office, wherein, the Military Pay Technician states, the applicant's packet was rejected by their separations office because his packet did not contain a DD Form 7783. The form was very important because the applicant was entitled to ISP.

4. On 3 November 2023, the Defense Finance and Accounting Service (DFAS) responded to an ARBA Case Management Division request for information pertaining to this case and stated, the applicant received \$24,073.12 for ISP but it was collected back. The applicant turned in a DA Form 7783 that was not signed by the RC career counselor and signed after the date of separation, and that is why the finance office/DFAS collected it back.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant was separated from active duty on 4 February 2023 due to alcohol rehabilitation failure. He was assigned Separation Code JPD and completed 10 years, 5 months, and 14 days net active service. He was authorized half separation pay. However, in order to receive separation pay, the enlisted Soldier must agree to serve in the Ready Reserve of a Reserve Component of the Armed Forces for a period of not less than 3 years following his separation from active duty. The Board did not find, and the applicant does not provide such agreement. Nevertheless, since the applicant had completed over 10 years and separated in the rank of SGT, he was ineligible for signing a 3-year agreement in the Ready Reserve, due to retention control point. He was

required to sign a DA Form 7783 prior to his separation from active duty. This form is signed by the Soldier acknowledging that if following endorsement of this document it is determined that the Soldier is not qualified for enlistment in the Ready Reserve, he would not be enlisted by the Military Service concerned and would be considered to have met this condition of eligibility for separation pay. It appears in this case the applicant was unaware of signing the DA Form 7783, as evidenced by his email inquiring if anything else was needed from him. In other words, had the DA Form 7783 been signed before his separation date, he would have been authorized the separation pay. Based on this evidence, the Board determined an injustice occurred.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 by:

- showing the applicant and a Reserve Component Counselor timely signed the DA Form 7783, which shows he acknowledged the qualifications, requirements, and conditions to receive ISP, before his discharge date of 4 February 2023
- showing the Defense Finance and Accounting Service (DFAS) timely received and accepted the applicant's DA Form 7783, and processed payment of the ISP

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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. Army Regulation 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the 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. The ABCMR is not an investigative agency.
2. Title 10, USC, section 1174 (Separation pay upon involuntary discharge or release from active duty) states that a regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay unless the Secretary of the Army determines that the conditions under which the member is discharged do not warrant payment of such pay. The amount of separation pay which may be paid to a member is 10 percent of the product of his/her years of active service, 12 times the monthly basic pay to which he/she was entitled at the time of his/her discharge or release from active duty; or one-half of the amount computed under clause (1). As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement to serve in the Ready Reserve of a Reserve component for a period of not less than three years following the person's discharge or release from active duty.
3. Department of Defense Instruction (DODI) 1332.29 (Involuntary Separation Pay (Non-Disability)) states, in pertinent part, half payment of non-disability ISP is authorized to Service members of the Active and Reserve Components who are involuntarily separated from Active Duty/Active Service and who meet each of the five conditions in the following paragraphs:
 - a. The Service member meets the criteria for active service specified in Paragraph 3.1.a.(1).
 - b. The Service member's separation is characterized as "honorable" or "general (under honorable conditions)", and none of the conditions in Paragraph 3.4. apply.
 - c. The Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on Active Duty (AD)/Active Service (AS), or the Service member is being separated instead of board action as provided in DoDI 1332.30, under one of the following specific conditions: (1) The Service member is not fully qualified for retention and is denied reenlistment or continuation by the Military Service concerned, as provided for in DoDI

1332.14 or DoDI 1332.30, under any of the following conditions: (a) Weight control failure. (b) Parent or custody of minor child. (c) Military personnel security program. (d) Disability that existed before service (e) Mental or physical conditions and circumstances not constituting a disability. (f) Alcohol or drug abuse rehabilitation failure. (g) Failure to meet minimum retention standards. (2) The Service member is being separated under a Service-specific program established as a half-payment level by the Secretary of the Military Department concerned within the authority of Section 1174 of Title 10, USC. (3) The Service member, having been denied reenlistment, extension, or continuation on AD/AS by the Military Service concerned in accordance with Paragraphs 3.1.b.(3)(a) and 3.1.b.(3)(b), accepts an earlier separation from AD/AS.

d. The Service member has entered into a written agreement with the Military Service concerned to serve in the Ready Reserve, as provided for in Paragraph 3.1.a.(4).

e. The Service member has signed the disclosure statement in Paragraph 3.1.a.(5), acknowledging that if the Service member later becomes eligible for retired or retainer pay and/or disability compensation from the Department of Veterans Affairs, the full amount of ISP received will be deducted from such pay.

//NOTHING FOLLOWS//