

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230004535

APPLICANT REQUESTS: remission of \$44,163.76 debt related to previously received Separation Pay (SP) with reimbursement of all monies collected.

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

- DD Form 149 (Application for Correction of Military Record)
- JUMPS Leave and Earnings Statements (LES) (May 2017 – July 2021)
- DD Form 139 (Pay Adjustment Authorization), 28 June 2019
- Memorandum – Subject: Possible Recoupment of Involuntary Separation Pay or Disability Severance Pay
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 21 October 2016
- DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), 28 November 2016

FACTS:

1. The applicant states in pertinent part that on 21 November 2016, he was erroneously released from active-duty service due to an administrative error. He contests that prior to this incident, he endorsed a recoupment letter acknowledging the Involuntary Separation Pay (ISP) recoupment action being deducted from his retirement pay and Department of Veterans Affairs (DVA) benefits. He notes that he received the ISP on or about 22 December 2016. He was later placed back on active duty in May 2017. He argues that the ISP recoupment debt was erroneously initiated in June 2017. On or about 28 June 2019, a DD Form 139 was submitted by the local finance office indicating that he had previously received an overpayment of his base pay on 21 November 2016 for \$57,308.22. Between January 2017 and August 2021, he contests that a total of \$44,163.76 has been wrongfully deducted from his pay and entitlements.

2. A review of the applicant's available service records reflects the following:

- a. On 26 September 2001, the applicant enlisted in the Regular Army.

b. On 1 June 2008, the applicant was promoted to the rank/grade of sergeant (SGT)/E-5

c. On 14 October 2016, the U.S. Army Installation Management Command issued Orders Number 288-0015 reassigning the applicant to the transition point pending separation on 21 October 2016. The applicant was entitled to full SP in accordance with Title 10, United States Code (USC), section 1174 (Separation Pay Upon Involuntary Discharge or Release from Active Duty).

d. On 21 October 2016, the applicant was honorably released from active duty with entitlement to \$56,991.60 in SP in accordance with Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4 (Separation for Expiration of Service Obligation). This document was later voided due to the applicant's extension (1 month) and subsequent reenlistment (indefinite).

e. On 16 November 2016, the U.S. Army Human Resources Command approved the applicant's request for an antedated extension of 30 days to facilitate his transition. The applicant was afforded 7 days to complete his extension.

f. On 21 November 2016, the U.S. Army Installation Management Command issued Orders Number 326-0014 revoking Orders Number 288-0015. This action was in conjunction with the applicant's antedated reenlistment for an indefinite period occurring on the same day.

g. On 29 November 2016, Headquarters, 11th Air Defense Artillery Brigade issued Orders Number 334-21 announcing the applicant's promotion to the rank/grad of staff sergeant (SSG)/E-6, effective 1 November 2016.

h. On 30 September 2023, the applicant was honorably retired from military service and transferred to the U.S. Army Reserve Control Group (Retired Reserve).

i. On 2 October 2023, the Department of the Army issued Orders Number 6167253 voluntarily placing the applicant on the retired list, effective 1 October 2023.

3. The applicant provides the following a:

a. JUMPS LES (May 2017 – July 2021), reflective of the applicant's pay and entitlements during this period. Upon review of note are the applicant's monthly deductions for lump sum leave recoupment (May 2017), SP recoupment (June 2017), advance debt (July – August 2017) etc. As of August 2019, approximately \$1,025.17 began being deducted from the applicant's pay. As of July 2021, the applicant had a \$13,144.46 remaining debt balance. These documents are provided in their entirety within the supporting documents for the Boards review.

b. DD Form 139 dated 28 June 2019, reflective of the Defense Military Pay Office, Fort Stewart, GA, conducting a review of the applicant's pay records. This review determined that the applicant's incurred debt was the result of an overpayment in Base Pay. It was determined that this debt was at the fault of the applicant and therefore collection was initiated for \$57,308.22 at a rate of approximately \$1,700.00 per month.

c. Memorandum – Subject: Possible Recoupment of Involuntary Separation Pay or Disability Severance Pay, reflective of the applicant's acknowledgment of the received \$57,308.22 in involuntary SP recoupment requirement. The applicant acknowledged that the total amount paid would be recouped from disability payments received from the DVA and in certain cases from his retirement pay.

d. DD Form 215 dated 28 November 2016 reflective of corrections made to the 21 October 2016 voided DD Form 214 which shows separation pay in the amount of \$56,991.00 was deleted and separation pay in the amount of \$57,308.22 was added.

4. On 28 September 2023, the Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Division provided an advisory opinion recommending disapproval of the applicant's request noting that the applicant was being discharged due to retention control points, however due to his promotion he was then allowed to reenlist for indefinite service. The applicant received the lump sum separation payment based on the issued separation order and DD Form 214 and did not return the funds into finance once when he reenlisted. Therefore, there is no evidence that he made restitution to warrant changing the record.

5. On 3 October 2023, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments.

6. On 19 October 2023, the applicant responded noting that he was not afforded the opportunity to return the previously received funds to the finance office. He contests that he was informed that he would receive a debt letter from the finance office and afforded 30 days to arrange payment. He denies receipt of this letter however deductions from his pay were initiated. He further contests that he was advised that the pay would be recouped from his DVA benefits and feels that if he was not receiving retirement pay, the debt would not exist. This contention is further provided in its entirety within the supporting documents for the Board review.

7. On 5 November 2023, the applicant provided a subsequent email acknowledging the debt action noting that he was not contesting repayment, he simply wanted the actions being conducted to be in accordance with the policies in place. A copy of this email is further provided within the applicant's supporting documents for the Board's review. In addition to the previously provided documents, the applicant provided a copy of an Order of Dismissal (U.S. Bankruptcy Court for the Western District of TX) dated

31 August 2017, certifying the dismissal of the applicant's Chapter 13 case due to his delinquency of 60 or more days on payments under a proposed or confirmed plan.

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 contentions, the military record, and regulatory guidance. The Board noted that the applicant was being discharged due to retention control points and received separation pay. Based on his promotion prior to his discharge, the applicant reenlisted for indefinite service and, therefore, became subject to recoupment of the separation pay. Evidence of record does not reveal documentation that he took appropriate action to refund the separation pay nor was any provided with the application for consideration of his request. After due consideration of the applicant's request, the Board determined the evidence presented does not meet the burden of proof in determining the existence of an error or injustice and a recommendation for relief is not warranted.

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 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.

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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. Title 10, USC, section 1174 – Separation Pay Upon Involuntary Discharge or Release from Active Duty provides 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 concerned determines that the conditions under which the member is discharged do not warrant payment of such pay. A member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

2. Army Regulation (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. 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 4837, 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. This includes debts caused by erroneous payments to or on behalf of a Soldier. Soldiers must make sure that their financial accounts are correct. They must review their monthly DFAS Form 702 (Defense Finance and Accounting Service (DFAS) Military Leave and Earnings Statement) and report errors or discrepancies in a timely manner to the commander and the Defense Military Pay Office director and/or Finance Accounting Officer.

3. AR 15-185 (ABCMR) paragraph 2-9 states 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.

//NOTHING FOLLOWS//