

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 16 February 2024

DOCKET NUMBER: AR20230005118

APPLICANT REQUESTS: in effect, remission, waiver, or cancellation of Defense Finance and Accounting Service (DFAS) debt.

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

- DD Form 149 (Application for Correction of Military Record)
- DFAS debt letter, final notice - Subject: Indebtedness to the United States Government, 20 January 2023
- DFAS debt and claims statement, 20 January 2023
- Email/text/screenshots, February and March 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, during his active duty military service in 2020, an allegation of larceny was lodged against him. In May 2020, the case was resolved, resulting in his discharge from the U.S. Army pursuant to the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10. Subsequently, the court-martial that had been pending against him was discharged and dismissed on the date of his separation. No criminal charges were ultimately filed, and all preferred charges were dismissed and expunged. In light of the aforementioned facts, he hereby seeks rectification and relief for this error and the resultant injustice, specifically the validation of pertinent information.

a. He maintains that he should not have an outstanding balance with DFAS, given the dismissal and expungement of all charges. The debt letter, dated 30 January 2023, erroneously asserts that the debt is attributable to overpayment of travel entitlements, or the non-settlement of a travel advance received prior to separation, pursuant to travel order number 2DBAU0. This assertion is inaccurate, as he was subject to a flag, which precluded him from traveling. Furthermore, his pay was garnished for a period of seven

months. In consideration of the absence of charges filed to substantiate a balance, his account should have reflected a zero balance upon his separation date. Consequently, he respectfully requests the validation of the information concerning the alleged debt, in accordance with applicable legal standards.

b. His military records appear to be in error or unjust due to a combination of factors, including procedural inconsistencies and potential miscommunications during his separation process. This has resulted in him being subjected to an unjust debt claim, despite the dismissal and expungement of all charges against him. The following points outline the basis for this belief -

(1) Dismissal and expungement of charges: He asserts that all charges lodged against him during his active duty military service were ultimately dismissed and expunged. Despite this, his military records and subsequent interactions with the Department of Defense Finance and Accounting Service seem to reflect a different outcome, resulting in the continued assertion of a debt related to travel entitlements or a non-settled travel advance. This discrepancy raises questions about the accuracy and completeness of his military records, as well as the communication between relevant parties.

(2) Flag precluding travel: he further contends that he was subject to a flag during his active duty service, which prevented him from traveling. This would mean that any debt related to travel entitlements, or a non-settled travel advance should be considered erroneous, as he was unable to utilize the funds for the intended purpose.

c. It is unclear whether this information was accurately recorded in his military records or communicated to DFAS, potentially contributing to the error or injustice in question.

(1) Garnishment of pay: He claims that his pay was garnished for a period of seven months, presumably in connection with the larceny allegations. Given that these charges were ultimately dismissed and expunged, it stands to reason that any funds withheld during this period should have been returned or credited to his account. The persistence of an alleged debt suggests that this may not have occurred, further indicating potential errors or omissions in his military records or the administration of his separation process.

(2) Absence of substantiated charges: In light of the dismissal and expungement of all charges against him, it is unjust for his military records to continue reflecting an outstanding balance with DFAS. The absence of substantiated charges should have resulted in a zero balance upon his separation date. The current state of his records, which erroneously claim a debt, points to a possible breakdown in communication or recordkeeping between the U.S. Army, the court-martial, and DFAS.

c. In conclusion, his military records appear to be in error or unjust due to potential procedural inconsistencies, miscommunications, and omissions during his separation process. The continued assertion of an unsubstantiated debt, despite the dismissal and expungement of all charges, demonstrates the need for a thorough review and rectification of his records. This will ensure his military service is accurately and justly reflected and that he is not unfairly burdened by erroneous claims or debts.

3. He enlisted in the Regular Army on 8 September 2010 and reenlisted on 21 November 2013 and 14 November 2014.

4. Orders Number 145-005 published by Headquarters, 2D Infantry Brigade Combat Team, 25 Infantry Division, Schofield Barracks, HI, promoted the applicant from sergeant to staff sergeant, with an effective date of rank of 1 June 2017.

5. The applicant's charge sheet and discharge packet are not available; and he did not provide them.

6. On 12 May 2020, the separation authority approved his request for discharge in lieu of trial by court-martial, under the provisions of AR 635-200, Chapter 10, with a characterization of service Under Other Than Honorable Conditions.

a. In accordance with AR 635-200, paragraph 1-32a and AR 40-501 (Standards of Medical Fitness), Table 8-2, the applicant would be discharged without separation physical or mental examination unless a written request for such was submitted. No written waiver is necessary. In the event that either a physical or mental examination was requested, separation would not be delayed for completion of the examination, and the examination(s) may be completed at Department of Veterans' Affairs (VA) facilities after discharge.

b. The separation authority directed he be immediately reduced to the lowest enlisted graded, and he would not be transferred to the Individual Ready Reserve.

7. The applicant was discharged accordingly on 27 May 2020. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9 years, 8 months, and 20 days net active service. In pertinent part, it also shows in:

- item 4a (Grade, Rate or Rank) – PV1
- item 12i (Effective Date of Pay Grade) – 12 May 2020
- item 18 (Remarks) – Service in Afghanistan from 17 January to 30 September 2012
- item 24 (Character of Service) – Under Other Than Honorable Conditions
- item 25 (Separation Authority) – AR 635-200, Chapter 10
- item 28 (Narrative Reason for Separation) – In Lieu of Trial by Court-Martial

8. The analyst of record notes a U.S. Army Criminal Investigation Command Schofield Barracks, Hawaii investigation is unavailable.

9. In support of his case, the applicant provides:

a. DFAS debt letter, final notice - Subject: Indebtedness to the United States Government, dated 20 January 2023, which referred the applicant to the DFAS debt and claims statement and informed him of the processes and procedures of paying and resolving the debt.

b. DFAS debt and claims statement dated 20 January 2023, which shows a total balance due in the amount of \$183,742.57. The debt is due to overpayment of travel entitlements or non-settlement of a travel advance that he received prior to separation per travel order number 2DBAU0, dated 15 May 2020. If he disagreed with the validity or amount of his debt, he was advised to contact the local pay office or Defense Military Pay Office that placed him in debt and have them provide the DFAS debt and claims office with proper documentation to alter or cancel his debt.

c. Screenshots/emails/texts in February and March 2023 between him and DFAS discussing his dispute of the travel pay debt and his explanation of the debt. He requested a reexamination and was informed on the appropriate process and procedures to address the matter.

d. Email communication dated 4 April 2023, between him and the Military Pay Review Office, Schofield Barracks, HI, related to making a dispute over his out of service debt. He was directed to submit a request to DFAS "Correction of Records/claims."

10. On 27 September 2023, the Office of the Deputy Chief of Staff G-1, Program Analyst, Compensation and Entitlements Division provided an advisory opinion for this case and recommended disapproval. The advisory official stated:

a. After careful review of the information provided, the G-1 recommends this case be disapproved for records correction and debt relief. The applicant is requesting administrative relief of pay and allowance debt due to a period of fraudulent Basic Allowance for Housing (BAH) claim.

b. During an investigation conducted by the U.S. Army Criminal Investigation Command Schofield Barracks, Hawaii, it was opined that there was probable cause to believe the applicant committed the offense of fraud, larceny of government funds and false statement. There is no evidence that the applicant made restitution to warrant changing the record.

11. On 28 September 2023, the applicant was provided a copy of the advisory opinion. He responded by email and states:

a. Upon marriage, while he was stationed in North Carolina, J__ pursued her education in Tallahassee. They had plans for her to join him post-graduation. However, an unexpected offer from San Francisco State University for J__ altered their plans. Understanding the significance of this opportunity, he supported her decision and arranged for her accommodation in San Francisco. In November 2015, he, along with his stepfather S__ and family friend I__, planned to transport J__'s belongings to San Francisco. On the planned day, J__ was unreachable with her apartment found empty. This unforeseen circumstance left them with no choice but to cancel the trip.

b. With the realization in 2016 that their marriage was untenable, he initiated divorce proceedings. Employing a reputable attorney in Hawaii, they adhered to legal protocols by placing ads in local newspapers in both Tallahassee and San Francisco to trace J-. This strategy eventually led to locating J- in late 2019, allowing them to serve the divorce papers and proceed with the divorce.

c. He diligently informed his unit's administration about the ongoing divorce, providing all necessary documentation. Despite this, there were bureaucratic delays. On 5 December 2018, he submitted his divorce decree to Specialist (SPC) Z__ at Headquarters and Headquarters Battalion, who provided him with a DA Form 200 (Transmittal Letter). However, a follow-up on 17 January 2019, with the 225th Brigade Support Battalion S-1 revealed that his documents were not updated. SPC W__ then provided him with another DA Form 200. Yet, subsequent checks revealed persistent discrepancies in the updating of his marital status, despite numerous follow-ups.

d. During this period, he battled memory loss and Traumatic Brain Injury (TBI), a situation exacerbated by the stress of the divorce proceedings and military bureaucratic hurdles.

e. Post-divorce, he remarried on 31 December 2018. Despite submitting the necessary documents to update his marital status, the military administration failed to update his records until late August, and even then, his marriage certificate was not updated as evidenced by his Enlisted Record Brief stating he is single.

f. Documentation relating to attempts at purchasing homes further substantiates his narrative and reflects the financial implications of the divorce.

12. The applicant submitted more than 750 documents with his email response, which include DA Forms 200 dated 5 December 2018 and 17 January 2019, medical records/documents, property transaction documents including BAH references and information, documented conversations with J__, divorce attempts (2012 and 2016-

2019), and finalized divorce documents. The documents provide a detailed account and verifiable evidence of the aforementioned events in paragraph 6 above. He trusts this account, along with the attached documents, provide a clearer understanding of his situation and the challenges faced during this period. He is available to furnish any further information or clarification as may be required to assist in a thorough review of his application. These documents are provided to the Board for review in their entirety within the supporting documents.

BOARD DISCUSSION:

1. The Board considered the applicant's request for, in effect, remission, waiver, or cancellation of Defense Finance and Accounting Service (DFAS) debt.
2. 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.
3. The Board concurs with the advisory opinion from the Army G-1. The evidence of record shows the applicant was paid BAH he was not entitled to receive.

REFERENCES:

1. Title 10, USC, 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. Title 10, USC, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.
3. Title 10, USC, section, 2774 (Claims for overpayment of pay and allowances and of travel and transportation allowances):
 - a. Permits waiver of collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States.
 - b. The Director of the Office of Management and Budget or the Secretary concerned, as the case may be, may not exercise his authority under this section to waive any claim — (1) if, in his opinion, there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining a waiver of the claim; or (2) if application for waiver is received in his office after the expiration of five years immediately following the date on which the erroneous payment was discovered.
4. AR 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 Army Board for Correction of Military Records (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.
5. AR 635-200 (Active Duty Enlisted Administrative Separations) prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 10 (Discharge in Lieu of Trial by Court-Martial) provides that a Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the MCM, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

b. The request for discharge in lieu of trial by court-martial does not prevent or suspend disciplinary proceedings. Whether proceedings will be held in abeyance pending final action on a discharge request is a matter to be determined by the commander exercising general court-martial jurisdiction over the individual concerned.

c. Paragraph 10-2b (Personal decision) states, commanders will ensure that a Soldier is not coerced into submitting a request for discharge in lieu of trial by court-martial. The Soldier will be given a reasonable time (not less than 72 hours) to consult with counsel, qualified under UCMJ, Article 27(b), and to consider submitting such a request for discharge (see paragraph 3–7c). Consulting counsel will advise the Soldier concerning, in pertinent part, on the elements of the offense(s) charged, burden of proof, possible defenses, possible punishments, provisions of this chapter, type of discharge normally given under the provisions of this chapter, and rights regarding the withdrawal of the Soldier's request.

d. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he or she — (1) Has been counseled on the rights listed in paragraph 10-2b. (2) Understands his or her rights. (3) May receive a discharge under other than honorable conditions. (4) Understands the adverse nature of such a discharge and the possible consequences. Understands that limited use evidence may be included in the separation action under this chapter without affecting the characterization of separation that the Soldier may receive. (6) Understands the elements of the offense(s) charged and that he or she is "guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge."

e. The consulting counsel will sign as a witness, indicating that he or she is a commissioned officer of the JAGC, unless the request is signed by a civilian counsel representing the Soldier. e. A Soldier may waive consultation with counsel. If the Soldier refuses to consult with counsel, a statement to this effect will be prepared by the counsel and included in the file. The Soldier will also state that the right to consult with counsel was waived. Separation action may then proceed as if the Soldier has consulted with a counsel, or the General Court-Martial Convening Authority may disapprove the discharge request.

6. Department of Defense 7000.14R, Financial Management Regulation, Volume 7A, Chapter 26 (Housing Allowances) establishes policy pertaining to housing allowances. Housing allowances include Basic Allowance for Housing (BAH), Overseas Housing

Allowance (OHA), and Family Separation Housing (FSH) Allowance. Entitlement eligibility is subject to the conditions set forth in this chapter. In pertinent part it states:

a. Determinations and Fraudulent Claims - Dependency must be determined before a housing allowance is authorized. After initial approval, the Services must maintain adequate levels of internal audit to assure the legality, propriety, and correctness of all housing allowance payments. See individual Service regulations for procedures.

b. Fraudulent Claims - Any Service member who submits a claim for a housing allowance that contains a false statement is subject to court-martial or criminal prosecution. Fraudulent acceptance of benefits may cause a civilian recipient to be subject to criminal prosecution. The law provides for severe penalties of imprisonment and a fine. For military personnel, it may include a punitive separation, total forfeitures, and confinement.

7. AR 600-4 (Remission or Cancellation of Indebtedness) 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. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//