

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230005467

APPLICANT REQUESTS:

- remission or cancellation of indebtedness in the amount of \$27,566.00
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- self-authored statement
- Headquarters (HQs), XVIII Airborne Corps and Fort Bragg letter
- HQs, XVIII Airborne Corps and Fort Bragg General Court-Martial Orders Number 16
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- U.S. Department of the Treasury letter
- TransUnion reports
- medical records

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 in effect, he requests the remission or cancellation of his indebtedness which was from erroneous payment of pay and allowances in the amount of \$27,566.00.

He was Absent Without Leave (AWOL) during the period of 10 February 1993 through 9 July 2006 and was Dropped from Rolls (DFR) on 12 March 1993. His unit should have submitted the notification of his AWOL and DFR status to the Defense Finance and Accounting Service (DFAS) to stop the payment of his pay and allowances. Being the unit did not, the U.S. Army continued to deposit his pay and allowances into his bank account without his knowledge. During this period of time, he did not have access to

that bank account. He did not personally receive the monies nor does he know who the U. S. Army paid the funds to or where the overpayment was sent.

He feels he should be granted relief of this indebtedness because the U.S. Army lacked sufficient control to enforce policies and procedures for the reporting of AWOL and DFR Soldiers which would have terminated the payment of his pay and allowances. Also, this indebtedness would create a financial hardship and burden on him as he is physically and mentally disabled, has a low income and he relies on social security benefits. The U.S. Department of the Treasury notified him that 15 percent of his social security benefits would be withheld for the payment of his indebtedness.

He has been diagnosed with paranoid schizophrenia, depression, post-traumatic stress disorder, Parkinson's disease, glaucoma, and other disabilities. The schizophrenia manifested before he went AWOL suddenly and without warning. He experienced psychotic episodes but he was unaware he was a paranoid schizophrenic and did not seek treatment. On or about September 2006, when he was back in military custody, he was hospitalized and diagnosed with schizophrenia with paranoid delusions, hearing voices, hallucinations, disorganized thinking and cognitive impairment.

A TransUnion credit report shows a debt to the government was opened on 25 October 2007 for the overpayment debt and was closed on 8 May 2013 with a zero balance. The DFAS overpayment was charged off in August 2017 while he was incarcerated.

3. A review of the applicant's service record shows:

a. The applicant enlisted in the Regular Army on 15 November 1978.

b. On 5 March 1979, the applicant accepted non-judicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for the theft of sunglasses. His punishment included forfeiture of pay for 2-months, extra duty and restriction.

c. On 6 April 1987, the applicant accepted non-judicial punishment under the provisions of Article 15, UCMJ, for driving under the influence. His punishment included reduction to the rank of specialist four (SP4)/4, forfeiture of pay to be suspended to be remitted if not vacated before 3 August 1987 and extra duty.

d. On 16 February 1993, the applicant's duty status was changed to AWOL, effective 10 February 1993.

e. On 11 March 1993, the charge of AWOL for the period beginning on 11 March 1993 was preferred against the applicant.

f. On 23 March 1993, the applicant was reported as a deserter.

g. On 10 July 2006, the applicant was apprehended by civil authorities and was held at the Hays County Sheriff Office, TX.

h. On 27 October 2008, General Court-Martial Orders Number 16, issued by HQs, XVII Airborne Corps and Fort Bragg, the applicant was arraigned and found guilty at Fort Bragg on the offenses of one specification of desertion and three specifications of forcible sodomy upon a juvenile under the age of 12. The sentence was adjudged on 13 August 2008 of confinement for 22-years, reduction to the rank of private (PVT)/E-1 and a dishonorable discharge. The sentence was approved and except the part of the sentence extending to a dishonorable discharge will be executed. The applicant was credited for 765-days of confinement against the confinement sentence.

i. On 16 February 2012, General Court-Martial Orders Number 19, issued by HQs, U.S. Army Fires Center of Excellence and Fort Sill, the sentence to reduction to the grade of PVT/E-1, confinement for 22-years, and a Dishonorable Discharge was adjudged on 13 August 2008, had been finally affirmed. The accused was credited with 765-days of confinement against the sentence to confinement. Having been complied with, the Dishonorable Discharge would be executed.

j. On 19 April 2012, Orders Number 110-1308, issued by HQs U.S. Army Garrison Fort Sill, the applicant was assigned to the U.S. Army transition point, effective 20 April 2012 for discharge from active duty.

k. The applicant was discharged from active duty on 20 April 2012 with a dishonorable discharge under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations). DD Form 214 shows the applicant completed 14-years, 2-months, and 25-days of active service. It also shows in item 29 (Dates of Lost Time During This Period) 10 February 1993 through 9 July 2006 and 10 July 2006 through 20 April 2012 under Title 10 United States Code (USC), section 972 (Members: effect of time lost).

4. The applicant provides:

a. HQs, XVIII Airborne Corps and Fort Bragg letter dated 16 June 1993 sent to a Texas Congressman which stated the applicant was reported AWOL on 11 February 1993. The applicant's unit contacted his wife, who reported that she did not know where he was and that he took all the money from their checking and savings accounts and one of their vehicles. He left her with a vehicle that had a lien against it. His chain of command assisted her in obtaining support. The applicant was DFR on 12 March 1993.

b. U.S. Department of the Treasury letter dated 3 January 2023, stated he owed a debt to DFAS and that 15 percent of his monthly social security benefits would be withheld because the applicant failed to pay the debt.

b. TransUnion credit report shows an adverse account from DFAS was opened on 25 October 2007 for government overpayment. The account was closed on 28 May 2013 with a zero balance.

d. Five page of behavioral health records from Tropical Texas Behavioral Health for further review.

5. On 8 June 2023, in the processing of this case, the Office of the Deputy Chief of Staff G1, provided an advisory opinion regarding the applicant's request for remission or cancellation of his indebtedness. The advisory official stated their office did not recommend approval of the applicant's request. The applicant was requesting administrative relief of pay and allowance debt due to AWOL during the period of 11 February through 11 March 1993 and DFR during the period of 12 March 1993 through 9 July 2006. A Soldier who is AWOL and DFR is not authorized pay and allowances during those periods of absence. There is no evidence the applicant made restitution to warrant correcting his record.

6. On 16 June 2023, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. He did not respond.

7. On 6 June 2023, in the processing of this case, DFAS stated the applicant has an out of service debt due to overpayment of pay and allowances while he was AWOL during the period of 10 February 1993 through 9 July 2006. The original debt was \$27,487.98 and he currently owes \$27,534.00 which includes fees.

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 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 (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 U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled based on this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.
3. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Title 38 USC, section 503 (Administrative error; equitable relief), (a) If the Secretary determines that benefits administered by the Department have not been provided by reason of administrative error on the part of the Federal Government or any of its employees, the Secretary may provide such relief on account of such error as the Secretary determines equitable, including the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys. (b) If the Secretary determines that a veteran, surviving spouse, child of a veteran, or other person has suffered loss as a consequence of reliance upon a determination by the Department of eligibility or entitlement to benefits, without knowledge that it was erroneously made, the Secretary may provide such relief on account of such error as the Secretary determines is equitable, including the payment of moneys to any person whom the Secretary determines is equitably entitled to such moneys.
5. Department of Defense (DoD) Financial Management Regulation (FMR) 7000.14-R, volume 7a (Military Pay), chapter 3 (Absence from Duty-Effect on Pay and Allowances),
 - a. Paragraph 030202 (Unauthorized Absence and Desertion), a Determination by Court-Martial. A member found guilty of unauthorized absence by a court-martial forfeits pay and allowances for the period of absence. An acquittal (or disapproval by the reviewing authority, in case of conviction) affects only the disciplinary aspects of the

absence. It does not prevent an administrative determination that the member was absent without leave. When a member is in an unauthorized absence status, an administrative determination must be made as to whether the absence was unavoidable. If it is not excused as unavoidable, the member (including one mentally incompetent) forfeits pay and allowances for the period of absence. This applies even though a court-martial finds the member not guilty of a charge of unauthorized absence, or when a finding of guilty has been disapproved by the reviewing authority. A discharge for desertion is conclusive evidence of desertion for purpose of forfeiture of pay, even in the absence of trial by court-martial.

b. Paragraph 030206 (Military Confinement), pay and allowances accrue to a member in military confinement except when pay and allowances are forfeited by court-martial sentence.

c. Paragraph 030207, an absentee who surrenders or is apprehended after a term of enlistment has expired is not entitled to pay and allowances until restored to a full-duty status for the purpose of making good lost time. While held in retention, a member may be assigned duties as prescribed by regulations governing detained prisoners without being returned to full-duty status.

//NOTHING FOLLOWS//