

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 January 2024

DOCKET NUMBER: AR20230005905

APPLICANT REQUESTS: remission or cancellation of indebtedness in the amount of \$5,779.69.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Statement
- Enlisted Record Brief (ERB), 23 October 2007
- SGLV 8286 (Service Member's Group Life Insurance Election and Certificate), 21 June 2005
- DD Form 2648 (Pre-separation Counseling Checklist for Active Component Service Members), 10 March 2008
- Orders Number 059-0005, 28 February 2008
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 1 April 2008
- Defense Finance and Accounting Service (DFAS) Letter of Indebtedness, dated 16 February 2003

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 pertinent part, on 22 March 2006 [sic], he reenlisted for 4 years with a bonus, but only served part of that term, until 1 April 2008, due to becoming a single parent. In 2020, he received a notice of garnishment from DFAS and from his social security disability where he has been required to pay back the bonus received at approximately \$225.00 per month. As of January 2023, he has paid \$4,957.44. His remaining balance of \$2,013.36 still exists. He has maintained great military allegiance through various positions within the Veterans of Foreign Wars in his hometown in which he also served as an Army recruiter. Additionally, he was a consistent youth sports league supporter and volunteered his time with organizations such as Meals on Wheels.

Due to his recent financial situation, the impact of the monthly payment for the balance has caused hardship on his family and would significantly improve his living situations if the remaining debt were to be remitted or canceled.

3. A review of the applicant's available service record reflects the following:

a. On 26 February 1996, he enlisted in the U.S. Army Reserve.

b. On 13 August 1997, he enlisted in the Regular Army for a period of 4 years. He reenlisted on 17 October 2000 for 3 years and on 31 May 2002 for 4 years.

c. On 22 May 2005, he reenlisted in the Regular Army for a period of 4 years in military occupational specialty (MOS) 79R (Recruiter). In conjunction with his reenlistment, DA Form 3286 (Statements for Enlistment) and DA Form 4789 (Statement of Entitlement to Selective Reenlistment Bonus) were completed to show he was entitled to a bonus in MOS 79R for a period of 4 years.

d. His separation packet was submitted for separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) Chapter 6 (Separation because of Dependency or Hardship). The following documents were included with the packet:

- DD Form 93 (Record of Emergency Data), dated 21 June 2005
- Divorce Decree, dated 24 December 2007, wherein the applicant was awarded sole custody of his son
- Memorandum for Request for Separation Under AR 635-200, Chapter 6, dated 31 January 2008
- Memorandum, Subject: Separation Under AR 635-200, Battalion Commander approval
- DA Form 4187 (Personnel Action), dated 11 February 2008
- Memorandum, Subject: Separation Under AR 635-200, Chapter 6, dated 11 February 2008, separation approval authority
- Memorandum, Subject: Separation Under AR 635-200, Chapter 6, dated 26 February 2008

f. On 28 February 2008, Headquarters, U.S. Army Garrison, Fort George G. Meade issued Orders Number 059-0005 reassigning him to the U.S. Army transition point and honorable discharge, effective 1 April 2008.

g. DD Form 214, ending 1 April 2008 reflects an honorable discharge for parenthood under the provisions of AR 635-200, paragraph 6-3B(2). Item 12 (Record of

Service) shows service from 13 August 1997 to 1 April 2008 for a net active service this period of 10 years, 9 months, and 18 days.

4. The applicant provides the following:

a. ERB dated 23 October 2007 which shows his MOS as 79R and at the time he was married with 1 adult and 4 children as dependents.

b. SGLV 8286 dated 21 June 2005 showing his change in beneficiary or change of duty station, to reflect his mother and father as the beneficiaries.

c. DD Form 2648 dated 10 March 2008 which reflects his voluntary separation due to sole parenting.

d. DFAS Letter of Indebtedness, dated 16 February 2003, from the Chief of Staff, Deputy Director, Operations, wherein they provided a response to his United States Representative, The Honorable N- L-, request concerning the applicant's indebtedness with the Department of Defense, stating in effect:

(1) The applicant's debt of \$5,779.69 remains valid. They added interest and administrative fees of \$1,161.11. They applied collections from the Treasury Offset Program (TOP), totaling \$4,957.44. His current balance due is \$2,013.36.

(2) The applicant's debt is due to the recoupment of the unearned portion of his Selective Reenlistment Bonus (SRB) payment. He enlisted for a 48-month term, signed 22 March 2005; however, his unit reported he only completed 27 months of satisfactory performance, leaving the remainder to be recouped. DFAS acts solely as a debt collector, not the originator.

(3) Per the applicant's TOP deduction inquiry, the office received amounts totaling \$4,957.44, after their fees were deducted. Included with this letter is the TOP collections worksheet and SRB contract for his information and review.

(4) If the applicant feels the recoupment is unjust or incorrect, he may petition the Army Review Boards Agency to consider the matter.

(5) DFAS has since closed the applicant's account for collections. They have exhausted all efforts to collect his debt. However, his account will continue being reported to TOP until his debt is paid in full.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant's debt is due to the recoupment of the unearned portion of his Selective Reenlistment Bonus payment. He enlisted for a 48-month term, signed 22 March 2005; however, he only completed 27 months of satisfactory performance, leaving the remainder to be recouped. According to DFAS, the applicant's debt of \$5,779.69 remains valid. They added interest and administrative fees of \$1,161.11. They applied collections from the Treasury Offset Program (TOP), totaling \$4,957.44. His current balance due is \$2,013.36. DFAS acts solely as a debt collector, not the originator. The Board understands that the balance has caused hardship on his family; however, the Board also agreed with DFAS that this is a valid debt, and that the applicant has not provided a persuasive argument or substantiating evidence challenging its validity.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

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 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. Department of Defense Financial Management Regulation states:

a. Paragraph 5.2.1 – Debt Collection Offices (DCO) must issue the initial debt notification letter to the debtor within 5 working days following final confirmation of the existence and validity of the debt, the basis of indebtedness, and the amount of the debt. Only one due process debt notification is required to be issued to the debtor. DCOs may issue additional demand for payment letters at 30-day intervals after the date of the initial debt notification letter when deemed appropriate by the DCO.

b. Paragraph 5.2.2 - DCOs must exercise care to ensure the debt notification letter is dated the same day the letter is mailed, via the U.S. Postal Service (USPS), to the debtor's last known address or hand-delivered to the debtor. The DCO is required to retain a copy of the debt notification letter as part of the debtor's file. Salary and/or administrative offset may only begin after due process has been provided to the debtor. A DCO is not prohibited from issuing a written demand for payment to the debtor prior to issuing the more formal due process debt notification letter. A demand for payment is typically an abbreviated written request for voluntary repayment of the debt and is not considered sufficient notice of due process. A demand for voluntary repayment may be issued electronically to the debtor, while the formal debt notification must be delivered by the USPS.

3. 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 on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

//NOTHING FOLLOWS//