

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230006363

APPLICANT REQUESTS:

- correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to amend item 28 (Narrative Reason for Separation) to reflect hardship and corresponding separation code amended
- remission or cancellation of indebtedness in the amount of \$44,803.48
- repayment of recouped reenlistment bonus in the amount of \$5,885.78
- correction and release of his separation pay
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Divorce Decree, 17 February 2022
- Orders Number 213-0228, 1 August 2022
- DA Form 137-2 (Installation Clearance Record)
- DD Form 214, for the period ending 17 September 2022
- Separation worksheet with indebtedness
- Congressional email correspondence, 21 April 2023
- Defense Finance and Accounting Service (DFAS) Debt Letter, 17 May 2023
- Office of the Inspector General Letter, 27 June 2023
- Memorandum, Subject: Debt Notification, 7 July 2023

FACTS:

1. The applicant states:

a. He was erroneously separated from the Army under Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5-7 (Parenthood); he should have been separated under AR 635-200 Chapter 6 (Separation Because of Dependency or Hardship).

b. In accordance with (IAW) AR 635-200, he should have been chaptered out of the

Army under Chapter 6-3. His immediate family relied upon him for principal care and support and such care could not be provided while on active duty. He was awarded primary custody of his three children for over 80 percent of the year by judicial decree, and thus falls under the category of sole parent. The cause of the injustice is improper and negligent guidance from his command team and his military legal counsel. At no point was he informed of his options and was ensured his situation was common and would not be held liable for bonus recoupment. As he was concurrently dealing with the stresses involved with leaving the military and gaining full custody, he did not have sufficient time to study the chapter process on his own behalf, and thus relied heavily upon the counsel and guidance of the command and military legal counsel to act in his best interest. His military legal counsel was aware of the chapter process, his specific circumstances, and appears to have improperly represented him. Per Department of Defense Financial Management Regulation 7000.14-R, sections 3.3.4. and 3.3.4.4., he should not be held responsible for the repayment of his reenlistment bonuses. He was ensured by his military legal representative and retention he would not be held liable for recoupment due to the nature of his separation and was not informed of any debt to the military when he cleared finance, nor did DFAS provide him a letter or notice of indebtedness to The United States Government.

c. He was first informed of the \$44,803.48 debt when DFAS submitted the debt to a collection agency. Because DFAS failed to inform of his indebtedness, he was furthermore not provided any means of remedying the debt prior to being submitted for a collections account. The nature of the debt has resulted in the following:

(1) He maintains a Top Secret/Sensitive Compartmented Information clearance and is facing termination of his clearance and occupation due to the collections account.

(2) He did not receive his separation pay of \$28,311.96.

(3) He cannot receive Veteran's Affairs (VA) benefits compensation due to the status of his separation pay and debt.

(4) The Internal Revenue Service has not provided a tax return due to the status of his debt.

(5) His credit score is at an all-time low and has resulted in a complete stagnation of any forward progress towards his family's stability and financial security. The lack of proper care and guidance through the military chapter process has implemented severe stress on his family's life.

d. The hardship that this command team's failure has impeded on him and has led to the exact severity of stress and disablement that he sought to be chaptered from active duty to avoid in the first place. Correcting his chapter to what it should have been

originally will remedy the above injustice and allow him to properly provide a financially stable environment for his three children. He was forced to choose between custody of his children and military service and has been held unjustly at fault. Although he does fall under the parameters set in AR 635-200, chapter 5-7, the best possible course should have been taken for him, as should be the case for future Soldiers in similar situations.

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

- a. On 9 November 2010, he enlisted in the Regular Army.
- b. On 20 August 2013, he reenlisted in in the Regular Army for a period of 3 years.
- c. On 1 February 2016, he reenlisted in the Regular Army for a period of 2 years.
- d. On 11 August 2017, he reenlisted in the Regular Army for a period of 6 years with entitlement to a Selective Retention Bonus (SRB), for reclassification to MOS 19K (M1 Armor Crewman). In conjunction, he signed DA Form 4789 (Statement to Entitlement to SRB) entitling him to an SRB in exchange for 6-year enlistment in MOS 19K. The applicant's records are void of any documents showing his exact SRB entitlement.
- e. On 1 August 2022, Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell issued Orders Number 213-0228 reassigning him to the U.S. Army transition point for transition and processing and discharge effective 17 September 2022, under the provisions of AR 635-200, Chapter 5, paragraph 5-7.
- f. DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 17 September 2022 reflects an honorable discharge for parenthood under the provisions of AR 635-200.

(1) Item 12 (Record of Service) shows service from 9 November 2010 to 17 September 2022 for a net active service this period of 11 years, 10 months, and 9 days.

(2) Item 18 (Remarks) shows separation pay \$28,311.96.

3. The applicant provides the following:

- a. Divorce Decree, dated 17 February 2022, showing he and his former spouse share joint legal custody of their three children.

b. DA Form 137-2 as unspecified supporting evidence in his request for remission or cancellation of indebtedness.

c. Separation worksheet with indebtedness showing he was overpaid in the amount of \$44,803.46 at the time of separation from active duty.

d. Congressional email correspondence, dated 21 April 2023, wherein the applicant requested assistance from his Congressional representative A- S- wherein he completed a privacy release form and requested assistance with relief of recoupment of his indebtedness.

e. DFAS Debt Letter, dated 17 May 2023 notifying U.S. Representative A- S-, in effect, that the applicant's debt, in the amount of \$44,803.48 was valid and due to the unearned portions of his two SRB's (\$32,800.00 September 2017 and \$39,000.00 October 2021). He was notified of the debt on 2 February 2023. And 6 March 2023 which were returned as undeliverable. If he should disagree or seek relief, he would need to contact the ABCMR for further assistance.

f. Office of the Inspector General Letter, dated 27 June 2023 notifying the applicant that he must contact the Army Review Boards Agency (ARBA) for assistance with the recoupment of his debt.

g. Memorandum, Subject: Debt Notification, dated 7 July 2023 showing the debt notification for the applicant was sent to the wrong mailing address and that it was corrected.

4. On 27 November 2023, the Deputy Chief of Staff, G-1, Financial Management Specialist, Compensation and Entitlements Division, provided an advisory opinion recommending disapproval of the applicant's request for the bonus debt relief. The memorandum states:

a. After a review of the contract and supporting documents, it is recommended the Board disapprove his application for administrative relief for the bonus debt; however, recommend the Board direct a correction to the military pay record and the debt amount.

b. In review of the applicant's military pay record it was discovered the half separation pay in the amount of \$28,311.96 is not posted. His military pay record needs to be corrected to match the DD Form 214 and show the separation pay. Moreover, the record should also reflect the separation pay being deducted from the bonus debt of \$44,803.48, reducing the debt to \$16,491.52.

c. He does not present any information that warrants a correction to his discharge based on a hardship rather than parenthood in accordance with AR 635-200. A hardship separation requires that his dependent child relies upon him for principal care or support and that care, or support cannot be provided while on active duty in the Army; however, a parenthood separation indicates parental obligations interfere with fulfillment of military responsibilities. He has not provided evidence that supports a separation due to hardship.

5. On 28 November 2023, the applicant was provided with a copy of the advisory opinion to provide a response.

6. On 12 December 2023, he provided a rebuttal to the advisory opinion stating:

a. Although he was afforded 15 days to provide a response, the letter was received on 11 December 2023 only providing him with 1 day to reply.

b. Contrary to the \$28,311.96 not being posted. The specified amount was posted and has been applied towards his outstanding debt. After deductions, taxes, and fees, his remaining debt is approximately \$21,000.00. However, efforts to verify this with the Department of Treasury have been unsuccessful.

c. His unit was fully aware of his status as primary custodian of his children, as specified by his unit commander in the below attached documents. His reliance on the unit leadership and legal counsel was a significant factor which impacted his understanding of the options available to him during the challenging circumstances.

d. The Army reference to a sole child overlooks the fact that he is responsible for three children which require more attention and care. His military obligations directly conflicted with his parental duties as the primary caregiver. He, through no fault of his own, found himself in a hardship position as specified in Chapter 6 of AR 635-200.

e. He was left to make critical decisions without fully understanding the long-term impacts due to uninformed guidance. He made a sincere effort to establish a family care plan, however, it was not feasible as his plan required out-of-state travel making it impractical and unreliable. He was forced to choose between his career and his children and naturally chose his family. He seeks assistance in resolving the matter of the indebtedness due to the hardship it has caused.

f. In addition, he provided the following documents as supporting evidence:

- ABCMR ExParte Letter and Redacted Advisory Copy
- Divorce Decree
- Email Correspondence with the Military Justice Advisor

- Family Care Plan packet
- DFAS Debt Letter to U.S. Representative A- S-, dated 7 September 2023

BOARD DISCUSSION:

1. After reviewing the application and all supporting documents, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records the Board found error in the applicant's narrative reason for discharge. The Board determined evidence in the record shows, at the time of separation, documentation supports the requested narrative reason for separation as hardship. Based on this, the Board found relief to correct the applicant's record to show he was discharged for hardship instead of parenthood and to amend the corresponding separation code.

2. Due to the Board's determination to change the narrative reason for separation from parenthood to hardship; the Board also determined the applicant to be eligible for the incentives received and therefore granted relief of the remission or cancellation of indebtedness in the amount of \$44,803.48 and repayment of the recouped reenlistment bonus in the amount of \$5,885.78. Additionally, the Board granted correction and release of his separation Board as advised by the Deputy Chief of Staff, G-1, Financial Management Specialist, Compensation and Entitlements Division.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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 records of the individual concerned be corrected by:

a. Amending the applicant's DD Form 214 to show:

- Separation Code: KDB
- Narrative Reason for Separation: Hardship

b. Notifying DFAS that the applicant's debt in the amount of \$44,803.48 has been relieved and that he is entitled to repayment in the amount of \$5,885.78.

c. Showing the applicant's correct separation pay amount and his eligibility to receive the remaining balance of his separation pay.

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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. 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.

2. 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.

3. AR 635-200 (Active Duty Enlisted Administrative Separations), Chapter 5, paragraph 5-7 (Involuntary separation due to parenthood), states:

a. Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. (See AR 600–20, chapter 5, concerning Soldiers' responsibilities for care of family members as related to military responsibilities.) Specific reasons for separation because of parenthood include:

- Inability to perform prescribed duties satisfactorily
- Repeated absenteeism
- Repeated tardiness
- Inability to participate in field training exercises or perform special duties such as CQ and staff duty noncommissioned officer (NCO)

- Non-availability for worldwide assignment or deployment according to the needs of the Army

b. Separation processing may not be initiated under this paragraph until the Soldier has been adequately counseled concerning deficiencies and has been afforded the opportunity to overcome them (see paragraph 1 – 17 and AR 600 – 20). Prior to initiation of separation under this paragraph, the unit commander will document efforts made to assist the Soldier in overcoming the deficiencies.

c. For characterization of service or description of separation, see paragraph 5 – 1. If, after adequately counseling and a reasonable opportunity to overcome deficiencies, a Soldier refuses or fails to take steps to address the deficiencies, a commander, in consultation with the commander's servicing attorney in the Judge Advocate General, should consider whether such refusal or failure constitutes failing to follow a lawful order and processing under chapter 14 as misconduct.

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 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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//