

IN THE CASE OF: ██████████

BOARD DATE: 9 September 2024

DOCKET NUMBER: AR20230006834

APPLICANT REQUESTS: remission of his Defense Finance Accounting Service (DFAS) debt.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders D 207-21 Permanent Disability Retirement
- DFAS Debt Letter
- Self-Authored Email

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he has a debt on his Reserve pay record unrelated to pay allowance entitlement. The debt is for waived military pay to receive Department of Veterans Affairs (VA) benefits for fiscal year (FY) 2017. He has never served with or been in the Reserves. All of his service was with the Army National Guard. He has reached out to the ARNG on this matter as well. They have no record of any debt. He requested documents from DFAS and they responded they did not have documents. Everyone that he has spoken with at DFAS cannot give him any information on the debt. They advised him to put in a ticket asking for documentation on this matter. The ticket came back with no information just a copy of the letter they had sent him. He called DFAS and they provided him with a DD Form 149 so he could ask for the debt to be cancelled.
3. The applicant provides the following documents:
 - a. A letter from DFAS, 22 August 2022, which shows he had a debt in the amount of \$10,539.88 due to a deduction on his reserve pay record unrelated to pay and

allowance entitlement. His debt is for waived military pay to receive VA benefits for FY 2017.

b. A self-authored email to the Army Review Boards Agency, 26 January 2024 states he requested any and all documents on his debt and was told DFAS did not have anything to send. He talked to the ARNG over the phone and they did not have anything on their end and did not know what DFAS was talking about.

4. The applicant's service record contains the following documents:

a. DD Form 4 (Enlistment/Reenlistment Document) shows the applicant enlisted in the ARNG on 21 May 2002. He remained in the ARNG through extensions of his enlistment.

b. On 18 December 2015, the VA issued him a Rating Decision regarding his entitlement to VA benefits. The decision shows his historical combined rating as follows:

- 50% effective 21 April 2005
- 0% effective 1 January 2007
- 60% effective 23 July 2013
- 90% effective 8 April 2015
- 100% effective 17 September 2015.

Additionally, his monthly entitlement amount is as follows:

- Total VA Benefit/Amount Withheld/Amount Paid/Payment Date/Reason
- \$3,015.22/\$1,104.39/\$1,910.83/1 January 2016 Drill Pay Adjustment
- \$3,015.22/0.00/\$3,015.22/4 March 2016/Drill Pay Adjustment
- \$2906.83/0.00/\$2,906.83/13 November 2023/Minor Child Adjustment

c. An Informal Physical Evaluation Board Proceedings, 9 July 2018 shows the board found he was physically unfit for duty and recommended a rating of 50 percent (%) and that he be permanently retired for disability. He concurred with the findings of the board and waived a formal hearing in his case. He did not request reconsideration of his VA ratings.

d. Orders D 207-21, published by U.S. Army Physical Disability Agency (USAPDA), 26 July 2018 shows he was placed on the retired list on 30 August 2018 with a 50% disability rating.

e. Memorandum from USAPDA, Subject: Permanent Physical Disability Retirement, 26 July 2018 advised him that in accordance with the findings and recommendation of

the USAPDA, he had been found to have a disability and would be permanently retired with a disability rating of 50%.

f. NGB Form 22 shows he was honorably discharged from the ARNG on 30 August 2018 under the authority and reason of medical retirement.

g. Orders 030-007, published by State ██████████ Adjutant General's Office, 30 January 2019 honorably discharged him from the ARNG effective 29 August 2018 by reason of physical disability which effected duty performance. The discharge did not prevent application for Department of Veterans Affairs (VA) benefits. Assignment loss was for placement on the permanent disability retired list.

5. On 8 January 2024, DFAS responded to a request for information stating the applicant had a debt in their system due to waived military pay to receive VA benefits for FY 2017. The original amount of the debt was \$10,539.88. He had paid \$8,859.70 toward the debt and still owed \$1,787.17. DFAS no longer had any documentation since the debt was interfaced into their system.

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 evidence shows the applicant had a debt in their system due to waived military pay to receive VA benefits for FY 2017. The applicant received both drill pay and VA pay. The original amount of the debt was \$10,539.88. He had paid \$8,859.70 toward the debt and still owed \$1,787.17. DFAS advised that they no longer had any documentation since the debt was interfaced into their system. Based on available evidence, the Board determined there is insufficient evidence to waive or remit the applicant's debt.

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.

9/9/2024

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CHAIRPERSON


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, U.S. Code (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. The Department of Veterans Affairs Compensation and Pension Manual Adjudication Procedures Manual states drill pay cannot legally be paid concurrently with VA compensation and pension benefits. A veteran must waive either VA benefits or drill pay.

3. Title 10 USC, Section 12316 states a Reserve of the Army who because of the Reserve's earlier military service is entitled to a pension or disability compensation, and who performs duty for which the Reserve is entitled to compensation may either elect to receive for that duty either the pension or disability compensation to which the Reserve is entitled because of the Reserve's earlier military service or if the Reserve specifically waives those payments, the pay and allowances authorized by law for the duty that the Reserve is performing.

4. Title 38 USC, Section 5304(c) states pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

5. 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.

//NOTHING FOLLOWS//