

IN THE CASE OF: ██████████

BOARD DATE: 11 January 2024

DOCKET NUMBER: AR20230006946

APPLICANT REQUESTS: in effect –

- cancellation of his debt with the Defense Finance and Accounting Service (DFAS)
- correction of his Form W-2 (Wage and Tax Statement) 2018 and debt due to incorrect information on his Leave and Earnings Statement (LES) for 2018

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

- DD Form 149 (Application for Correction of Military Record)
- LESs for the period of December 2017 to May 2018
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 10 April 2018
- Form W-2 2018
- ConServe debt collection statement, 24 June 2019

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:

a. He requests correction to his W-2 2018 and debt due to incorrect information on his LES for 2018. "W2 2018: \$35,485.98, April 2018 LES Wage Year to Date (YTD): \$30,912.00, May 2018 LES Wage YTD: \$28,351.00. The LES and W2 Wage YTD do not match". Relief from debt and W-2 2018.

b. He was in confinement from October 2017 to September 2022 in ██████████ County Jail ██████████ and never received any pay while in confinement nor received any of the \$35,485.98 that is reflected on the W2 2018. This correction should be made as there is conflicting information from what the 2018 LES and W-2 2018 states.

c. He was not entitled to any pay while in confinement nor did any of the money go into his bank accounts. He never received this money and would have to pay taxes on money that he never received. He received the W2 2018 from his father on 10 February 2023, then he contacted DFAS that same week to find out about where the money was. He was informed to request his LES to see if there was any pay. He received the LES 10 business days later and then had to call DFAS back about the conflicting information on the LES and W-2 2018 and whether this was the next step in the process for getting this issue fixed. He was in confinement from October 2017 to September 2022 unable to learn of or deal with this issue.

3. A review of the applicant's military records show the following:

a. He enlisted in the Regular Army on 17 September 2002 and served continuously through multiple reenlistments until he was discharged under other than honorable conditions for misconduct (serious offense).

b. A Superior Court of ██████████ County document shows the prosecuting attorney for ██████████ County accused the applicant of attempted commercial sexual abuse of a minor. In pertinent part, on or about 26 May 2017, the applicant paid or agreed to pay a fee to a minor or a third person pursuant to an understanding that in return for such fee, a minor (a fictitious 15-year-old, whose identity was an undercover ██████████ Police Detective) would engage in sexual conduct with him. He did solicit, offer, or request to engage in sexual conduct with a minor.

c. On 30 May 2017, a U.S. Army Criminal Investigation Command, Joint Base Lewis-McChord, WA, law enforcement report shows the applicant was the subject of an investigation for the offense of "communication with minor for immoral purposes." He was arrested on 25 May 2017 by the ██████████ County Police Department for the offense, and the investigation continued.

d. On 23 June 2017, a DA Form 4856 (Developmental Counseling Form) shows the applicant was counseled and notified that he was being recommended for Chapter 14-12c (Commission of a Serious Offense) administrative separation based on a pending civil law enforcement investigation. He agreed with the counseling.

e. On 14 August 2017, medical documents show he underwent a medical examination and was cleared for separation action.

f. On 17 August 2017, DA Form 3822 (Report of Mental Status Evaluation) shows he underwent a mental status evaluation and was cleared for administrative separation from a behavioral health perspective.

g. DA Form 268 (Report to Suspend Favorable Personnel Actions (Flag)) shows a flag was initiated against the applicant for "involuntary separation - field initiated (B)", effective 20 September 2017.

h. On 13 October 2017, the immediate commander notified the applicant that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c for commission of a serious offense. The reasons for the proposed action were based on the applicant's attempt to communicate with a minor for immoral purposes. The commander informed the applicant of his rights, and he acknowledged receipt of the notification.

i. The applicant's chain of command recommended approval of the separation action.

j. On 31 October 2017, a DA Form 4187 (Personnel Action) shows the applicant's duty status was changed from present for duty to confined by civilian authorities.

k. On 4 April 2018, the separation authority approved the applicant's unconditional waiver and directed he be discharged from the Army and furnished an Other Than Honorable Conditions Discharge Certificate. He also directed the applicant's reduction to the lowest enlisted grade.

l. On 10 April 2018, the applicant was discharged from the Army accordingly. His DD Form 214 shows he completed 15 years, 1 month, and 14 days net active service and his service was characterized as "under other than honorable conditions." Item 29 (Dates of Time Lost During This Period) shows he had lost time from 31 October 2017 to 10 April 2018.

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

a. LESs for the period of December 2017 to May 2018, which shows his entitlements, deductions, Federal Income Tax Withholding (FITW), State Income Tax Withholding (SITW), wages for the year to date, held pay and other pay and allowances.

b. W-2 2018 which shows a total of \$35,485.98 in wages, tips, and other compensation.

c. ConServe debt collection agency statement dated 24 June 2019, which shows he owes a debt in the amount of \$8,672.36.

5. On 21 August 2023, email between the Army Review Boards Agency Case Management Division and DFAS stated, in pertinent part:

a. The applicant has debts in the out of service debt system. The debt is due to overpayment of pay and allowances while he was confined from 31 October 2017 to 10 April 2018.

b. The debt is due to over deduction of FITW and/or SITW paid in his behalf after separation to the Internal Revenue Service and/or state taxing authority. The applicant will receive the benefit of the over deductions when he files his tax return. The original debt amount was \$6,644.19. The applicant has paid \$99.72 toward the debts. He still owes \$6,571.33. He actually may owe more because the account is at the Private Collection Agency. Attached is a computation of the debts which shows the amount of \$6,644.19.

6. On 11 September 2023, the Office of the Deputy Chief of Staff G-1 provided an advisory opinion for this case. The Program Analyst, Compensation and Entitlements Division stated:

a. After careful review of the information provided, we recommend 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 civilian confinement. The applicant was placed into civilian confinement 31 October 2017.

b. When a Soldier is in civilian confinement they are not authorized pay and allowances during these periods of absence. Military pay was disbursed to the applicant's bank account at the end of November 2017 erroneously. The applicant has been issued a W-2c (Corrected Wage and Tax Statement) to correct the erroneous report of wages for 2018. There is no evidence that he made restitution to warrant changing the record.

7. The Office of the Deputy Chief of Staff G-1 also provided copies of the applicant's W-2 2018 and W-2c dated 7 September 2023 which corrected the applicant's Form W-2 2018 to show a wages, tips, and other compensation amount of zero dollars and cents.

8. On 14 September 2023, the applicant was provided a copy of the G-1 advisory opinion to allow for comments and/or rebuttal. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. After reviewing the analysis provided by the advisory official, the Board concluded that the debt imposed against the applicant based on the erroneous receipt of pay and

allowances is a just debt. The Board determined the evidence does not support correcting the record to show collection of this debt was cancelled.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

4/1/2024

X

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, 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 37, USC, section 503 (Absence without leave or over leave) provides that, a member of the Army who is absent without leave or over leave, forfeits all pay and allowances for the period of that absence, unless it is excused as unavoidable.
3. 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.
4. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 7837, 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 may not be canceled under Title 10 USC, section 7837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//