

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 January 2024

DOCKET NUMBER: AR20230007052

APPLICANT REQUESTS:

- remission of debt associated with excess leave taken
- a personal appearance before the Board via video/telephonic

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statement, 31 July 2016
- DA Form 31 (Request and Authority for Leave), 24 August 2016
- DA Form 4187 (Personnel Action)
- DA Form 4187, 24 August 2016
- Memorandum – Subject: Requesting More than 30 Days of Leave
- Receipt of Fees Paid, 13 May 2022

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 that a debt has occurred associated with leave taken in excess of his accrued balance. He contests that this is incorrect as he has never taken excess leave.

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

a. On 23 August 2010, the applicant enlisted in the Regular Army for 6 years.

b. The applicant deployed to Afghanistan from 1 November 2012 – 1 July 2013.

c. On 15 September 2016, Headquarters, 101st Airborne Division (Air Assault) and Fort Campbell, issued Orders Number 259-0608 releasing the applicant from

assignment and duty because of a physical disability incurred while entitled to basic pay and under conditions which permitted his retirement for permanent physical disability.

d. On 29 November 2016, the applicant was medically retired from military service.

4. The applicant provides:

a. Leave and Earnings Statement, dated 31 July 2016, reflective of the applicant's pay and entitlements for the month of July 2016. As of 31 July 2016, the applicant had accrued 54.5 leave days.

b. DA Form 31 dated 24 August 2016, reflective of the applicant's submitted request to take 85 days of leave (6 September – 29 November 2016), of which 65 days were already accrued with 20 additional days being advanced.

c. DA Form 4187 reflective of the applicant's submitted request for an extension of his enlistment end date from 16 November 2016 to 29 November 2016 in order to take accrued leave. This document is void of endorsement by an approval authority.

d. DA Form 4187 dated 24 August 2016, reflective of the applicant's submitted request for an extension of his enlistment end date from 16 November 2016 to 29 November 2016 in order to take accrued leave. The immediate commander recommended approval.

e. Memorandum – Subject: Requesting More than 30 Days of Leave, reflective of a request to execute all accrued number of leave days during a terminal leave period due to a lack of opportunity to execute these days previously.

f. Receipt of Fees Paid dated 13 May 2022, reflective of \$25.00 paid to the Department of Motor Vehicles, [REDACTED]

5. On 16 August 2023, the Defense Finance and Accounting Services (DFAS) provided verification of the applicant's incurred debt. DFAS notes that the applicant's accrued debt was due to excess leave executed when he was retired from military service. A total of \$3,106.64 was recouped from the applicant. DFAS further provided that the applicant took leave from 1 October 2016 – 29 November 2016, which resulted in a negative balance of 21.5 days. Service members are not entitled to pay and allowances during periods of a negative leave balance. The applicant's debt has been paid in full.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. A majority of the Board found there is clear evidence of confusion on the applicant’s part regarding his available leave balance when he requested terminal leave in conjunction with his pending retirement for disability, and this confusion was exacerbated by the approval of that leave. A majority of the Board determined it is in the best interest of the United States to correct the applicant’s record to show collection of the debt he incurred due to overuse of leave prior to his retirement was cancelled.

3. The member in the minority noted the record clearly establishes that a valid debt was established against the applicant for overuse of leave and determined the debt is not in error or unjust.



BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	:	■	GRANT FULL RELIEF
:	:	:	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 changing the record to show the excess leave as convalescent leave (nonchargeable leave), thus cancelling his debt. As a result of this correction, all monies he paid toward that debt should be returned to him.

3/20/2024
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. Army Regulation (AR) 600-8-10 (Leaves and Passes) Paragraph 5-8 (Excess Leave) provides that excess leave is a no-pay status; therefore, entitlement to pay and allowances and leave accrual stops on the first day of excess leave. Excess leave may be authorized in emergencies provided that the aggregate of all leave granted (accrued plus advance plus excess) does not exceed 60 days and that accrued and advance leave is used before excess leave. The DA Form 31 for excess leave must include this statement in block 17, "I understand that excess leave is without pay and allowances, so I am not entitled to disability retirement or separation for disability incurred in an excess leave status except as provided in 10 USC 1201(c)." Counseling must include that excess leave is without pay and allowances, and leave does not accrue while the Soldier is in an excess leave status. Soldiers awaiting completion of administrative discharge may be granted leave provided that the aggregate of all leave granted does not exceed 60 days. Advance leave is not authorized.
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. 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. Additionally, it states in paragraph 2-11 that applicant's 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 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

5. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, 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 that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//