

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230007153

APPLICANT REQUESTS: remission of \$16,000.00 debt associated with previously received Family Separation Allowance (FSA).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 January 2005
- Self-authored letter
- Form B6E (Schedule E. Creditors Holding Unsecured Priority Claims)

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 while he was on active duty, he was erroneously receiving FSA as discovered by his unit administrative noncommissioned officer. He contests that his dependents address clearly reflected ██████████ rather than ██████████ and upon notifying his unit, they acknowledged the error indicating that they would cover \$1,200.00. However, what they failed to do was to terminate the pay entitlements associated with having dependents which now totals around \$16,000.00.
3. A review of the applicant's available service records reflects the following:
  - a. After serving in the Regular Army for 3 years, followed by service in the U.S. Army Reserve (USAR) Control Group (Reinforcement), on 7 September 1982, the applicant enlisted in the Army National Guard (ARNG).
  - b. On 12 May 1990, the applicant was released from the ARNG and transferred into the USAR Control Group (Annual Training).

- c. On 14 September 2002, the applicant enlisted in the ARNG for 1 year.
  - d. On 21 January 2003, the [REDACTED] ARNG ([REDACTED] ARNG) issued Orders Number 021-009 ordering the applicant to active duty in support of Operation Noble Eagle (Homeland Security), effective 28 January 2003. These orders do not authorize movement of household goods or dependents.
  - e. On or about 18 February 2003, the applicant received notification that the Defense Finance and Accounting Service (DFAS) would begin withholding \$485.33 per month in repayment of back child support owed.
  - f. On 13 January 2005, the [REDACTED] ARNG issued Orders Number 013-0092 releasing the applicant from active-duty, effective 23 January 2005. DD Form 214 reflects that the applicant served in a variety of states ([REDACTED]) during this period of active duty.
4. The applicant provides a Form B6E (Schedule E. Creditors Holding Unsecured Priority Claims), reflective of \$5,947.57 worth of salary overpayment.
  5. On 26 December 2023, the National Guard Bureau, Chief, Special Actions Branch, provided an advisory opinion recommending partial approval of the applicant's request noting that the applicant referenced a debt of \$16,000.00 that was caused by the ARNG when he was receiving FSA for [REDACTED] instead of [REDACTED]. The documents provided by the applicant only reflect a debt of \$5,947.57. Therefore, a clear debt amount cannot be determined. The Leave and Earnings statements provided by the Defense Finance and Accounting Service (DFAS) reflect financial errors wherein the applicant was not receiving entitlement payments of FSA starting on August 2003, and additionally receiving the wrong type of Basic Allowance Housing (BAH). Therefore, the NGB recommends that DFAS review the applicant's pay history during this period of service so that the correct amount of pay can be recouped or reimbursed as required.
  6. On 9 January 2024, the applicant received a copy of the advisory opinion and was afforded 15 days to provide comments. As of 7 February 2024, the applicant has not responded.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the findings and recommendation of the NGB advisory opinion, as well as the lack of any rebuttal of those findings and recommendation, the Board concluded there was sufficient evidence to remove a portion of the requested debt (\$5,947.57). The Board concluded further debt relief was unwarranted by the available evidence.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

:            :            :            GRANT FULL RELIEF

█           █           █           GRANT PARTIAL RELIEF

:            :            :            GRANT FORMAL HEARING

:            :            :            DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by cancelling a portion of the requested DFAS debt in the amount of \$5,947.57. NOTE: If all debt was previously collected, \$5,947.57 should be refunded to the applicant. However, if a debt greater than that cancelled by this board decision remains, than a reduction in the overall debt is appropriate.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to greater debt relief.

5/14/2024

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CHAIRPERSON

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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. 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.
2. Army Regulation (AR) 15-185 (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.
3. 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.
4. Department of Defense Financial Management Regulation, Volume 7A, Chapter 27 (Family Separation Allowance (FSA)) provides that FSA is payable only to members with dependents. Two types of FSA are authorized, Type I and Type II. Both types are payable in addition to any other allowance or per diem to which a member may be entitled. The purpose of this FSA (Type I) is to pay a member for added housing expenses caused by enforced separation from dependents. Type I is payable to each member with dependents who is on permanent duty outside the United States or in Alaska when transportation of dependents is not authorized, or dependents do not live at or near the permanent duty station. Type II provides compensation for added expenses incurred because of an enforced family separation to include when a member is on continuous Temporary Duty (TDY), or a period of TDY required before reporting to his initial station of assignment, or on Temporary Additional Duty (TAD) away from his permanent duty station, each of which is for more than 30 days, and the dependents live in the vicinity of the permanent duty station, not in the vicinity of the TDY/TAD station.

//NOTHING FOLLOWS//