

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 January 2024

DOCKET NUMBER: AR20230007259

APPLICANT REQUESTS: reimbursement in the amount of \$1,927.12 of his debt for use of excess leave.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- Orders Number HR-6061-00001 Order to Active Duty (AD)
- Master Military Pay Account (MMPA) December 2016
- Leave Verification
- Tour Demobilization Reserve Component (RC) Leave Calculation
- Leave and Earning Statement (LES) 30 July 2021
- MMPA December 2017
- LES 11 August 2021
- Orders Number HR-0297-00012
- LESs, 13 August 2021, 20 August 2021, 25 August 2021, 27 August 2021, 1 September 2021, 15 September 2021, and 15 October 2021
- Orders Number 0001839599.00 Retirement Orders
- Defense Finance and Accounting Service (DFAS) Debt and Claims Document
- Email Chain to [REDACTED] Army National Guard ([REDACTED] ARNG) Personnel
- Debt and Claims Management Online Customer Service Ticket

FACTS:

1. The applicant states in his application and self-authored letter, in effect:

a. He was improperly charged, after he retired, \$1,927.12 for excess leave, while on active-duty orders in 2021. He had banked 11 days of leave on a previous deployment from 2016 through 2017, and those leave days were supposed to be rolled over to his next deployment. He asks the Board to consider the documentation he submitted. He would like to be reimbursed in full to correct this error.

b. He is a retired [REDACTED] ARNG master sergeant (MSG)/E-8 and he is trying to correct his records and obtain reimbursement for an incorrectly levied debt for excess leave.

This effort is in its third phase and he hopes to close this matter soon with the Board's help.

c. He was on active duty orders from 1 March 2016 to 28 February 2017. At the end of his orders, he had 11 days remaining of leave. He was told he could roll over his leave from that year to a follow-on deployment.

d. He was on active duty orders from 5 November 2020 to 11 October 2021. After confirming with his parent unit and approval by his chain of command, he used his 11 days of rolled over leave during these orders.

e. On 30 June 2022, he retired from the [REDACTED] ARNG. On 30 December 2022, he received a bill in the mail from DFAS and was charged \$1,927.12 for excess leave on 1 August 2021 and 1 September 2021 through 7 September 2021. He began corresponding with his former unit's administration clerk, Sergeant First Class (SFC) [REDACTED] on 10 January 2022 who was unsuccessful in his attempt to help him correct the error.

f. On 16 January 2022, he paid the bill rather than pay in installments and miss a payment incurring further debt. He continued to correspond with SFC [REDACTED] and Captain (CPT) [REDACTED] from his former unit's higher headquarters to resolve the issue. CPT [REDACTED] created a trouble ticket in his own system, which he was unable to see. He was retired and no longer had access to .mil domains where the CPT's trouble ticket was located.

g. Finally, CPT [REDACTED] recommended he reach out to DFAS directly through their out-of-service debt section as neither the CPT nor SFC [REDACTED] were able to correct the issue.

h. On 15 February 2023, the applicant opened a ticket with DFAS to correct the record and get reimbursed. The ticket was submitted through DFAS' out-of-service debt section. He uploaded the requisite documentation but did not hear back for some time. He requested an update on the status of the ticket on 7 March 2023, and he did not receive a response.

i. On 10 April 2023, he called DFAS to obtain an update on the ticket and the representative indicated, after researching the ticket, it was not going forward, and it was not being closed. The DFAS representative told him to submit a DD Form 149 to the Board.

j. He hopes to be reimbursed in full for the \$1,927.12 incorrectly levied against him in 2022. He greatly appreciates the Board's efforts on his behalf.

2. The applicant's service record contains the following documents for the Board's consideration:

a. On 21 July 1995, having had prior U.S. Army Reserve and Regular Army enlisted service, DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), shows the applicant enlisted in the ARNG for a period of 1 year.

b. DA Forms 4836 (Oath of Extension of Enlistment or Reenlistment) show the applicant extended his enlistment in the ARNG on:

- 5 June 1999, for a period of 3 years
- 19 May 2002, for a period of 1 year
- 20 July 2003, for a period of 6 years
- 7 September 2006, for a period of 1 year
- 17 June 2010, for a period of 3 years
- 27 March 2013, for a period of 1 year
- 25 March 2014, for a period of 6 years
- 29 August 2019, for a period of 6 years

c. Memorandum, Subject: Notification of Eligibility for Retired Pay at Age 60 (Twenty Year Letter), dated 9 February 2007 notified the applicant he had completed the required years of serviced and would be eligible for retired pay, upon application, at age 60.

d. Orders Number HR-6061-00001, published by the U.S. Army Human Resources Command (AHRC), dated 1 March 2016 ordered the applicant to Active Duty (AD) for operational support in support of Operation Enduring Freedom (OEF) with a report date of 1 March 2016 for a period of 365 days including accumulated leave days. The end date was 28 February 2017.

e. Orders Number 046-0280, published by Headquarters, United States Army Garrison, Fort Bragg, dated 15 February 2017 released the applicant from AD, effective 28 February 2017.

f. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant, as a member of the ARNG, entered AD on 1 March 2016 and was honorably released to the NCARNG on 28 February 2017 for completion of required active service. Item 16 (Days Accrued Leave Paid) indicates 0. In item 18 (Remarks) on the continuation page states "Soldier request 11.0 accrued leave days be rolled over to his next tour."

g. Orders Number HR-0297-00012, published by AHRC, dated 23 October 2020, ordered the applicant to active duty for operational support in support of OEF-Conus Support Base with a report date of 5 November 2020 for a period of 341 days including accumulated leave days. The end date was 11 October 2021. The orders state, "All

processing to include transition leave must be completed before the expiration of these orders."

h. DD Form 214, shows the applicant, as a member of the ARNG, entered AD on 5 November 2020 and was honorably released to the [REDACTED] ARNG on 11 October 2021 for completion of required active service. Item 16 (Days Accrued Leave Paid) indicates 0. The remarks section does not have information regarding his 11 days of roll over leave.

i. Orders Number 298-0001, published by the U.S. Army Garrison, Fort Belvoir, dated 25 October 2021, released the applicant from AD, effective 11 October 2021. The orders do not include information regarding leave days accumulated.

j. Orders Number 0001839599.00 published by the [REDACTED] ARNG AUGOE Army Element Joint Force Headquarters, dated 24 May 2022 transferred the applicant to the U.S. Army Reserve Control Group (Retired Reserve), effective 1 July 2022.

3. The applicant provides the following documents, not previously considered:

a. MMPA, dated December 2016, shows the applicant's deployment from March 2016 through December 2016. He was paid for .5 days of leave and 0 days of leave were taken and accrued.

b. Leave Verification, dated 10 February 2017 shows the applicant departed on leave on 9 February 2017 and returned on 12 February 2017 the form was signed by his commander or first sergeant on 10 February 2017. The applicant's projected separation date was 28 February 2017.

c. Tour Demobilization RC Leave Calculation, dated 15 February 2017, shows the applicant's start date of 1 March 2016 and end date of 28 February 2017. He earned 30 days of leave and used 19 days, which left a balance of 11 days of leave. The form states rollover 11 days to applicant's next tour. The form was signed by the applicant and a military pay representative.

d. LES, dated 30 July 2021, shows the applicant had a balance of 16 days of leave, he earned 2.5 days and used 0 days. His current balance was 18.5 days.

e. MMPA, dated December 2017, shows the applicant was paid for .5 days of leave and 0 days of leave were taken and accrued.

f. LESs, dated 11 August 2021, shows before balance 18.5, earned 0, used 18, current balance .5.

g. 13 August 2021, 20 August 2021, 25 August 2021, 27 August 2021, 1 September 2021, 15 September 2021, and 15 October 2021, show his leave status, respectively as:

- before balance 18.5, earned 1.5, used 18, current balance 2
- before balance 18.5, earned 1.5, used 18, current balance 2
- before balance 18.5, earned 1, used 24, current balance -4.5
- before balance 18.5, earned 1, used 24, current balance -4.5
- before balance 18.5, earned 2, used 24, current balance -3.5
- before balance -3.5, earned 1.5, current balance -2
- before balance 0, earned 0, used 0, current balance 0

h. DFAS Debt and Claims letter, dated 30 December 2022, shows the applicant had a debt in the amount of \$1,927.12 for excess leave from 1 September 2021 to 7 September 2021 and for 1 August 2021. The applicant indicates the debt was paid in full on 16 January 2022 and that this amount needs to be reimbursed. DFAS Debt and Claims letter, dated 30 January 2023, shows the debt was paid in full.

i. Email chain from the applicant to personnel in the [REDACTED] ARNG, wherein the applicant was requesting assistance in resolving the debt with DFAS. [REDACTED] ARNG was trying to assist him with getting him a point of contact to resolve the issue. The entire email chain is available for the Board's consideration.

j. Debt and Claims Management - Online Customer Service, shows the applicant submitted a ticket on 15 February 2023, and requested a status update on 7 March 2023. The applicant included documentation regarding the debt to include the DFAS debt notification and leave rollover. The ticket was awaiting a response.

4. On 6 March 2024, in the processing of this case the [REDACTED] ARNG ([REDACTED] ARNG) provided an advisory opinion and stated:

a. After review of the applicant's situation and documents included in the request from the ABCMR, we have determined that his excess leave debt is erroneous. Tour Demobilization Reserve Component Leave Calculation clearly indicates that his 11 days of leave were to be rolled forward to his next tour of duty. This never happened, and he would have no reason to believe that it did not occur. His LES indicated that he had leave available for taking prior to executing his final leave days.

b. As a result, I have ordered my staff to return the funds due to the applicant. No further action is required in this case.

5. On 21 March 2024, in the processing of this case, the National Guard Bureau, Chief Special Actions Branch, provided an advisory opinion and stated:

a. In a correspondence letter from DFAS dated 30 December 2022, the applicant was provided notice information regarding a debt he had acquired for payment he was not entitled to during the period of 1 August 2021 thru 1 August 2021, and 1 September 2021 thru 7 September 2021. These periods represent payment of leave accrued, during a period when he had no accrued leave according to military records.

c. Records provided by the applicant show that he was on active-duty orders from 5 November 2020 thru 10 November 2021 and had received approval by his chain of command to use 11 days of roll over leave from a previous period of active duty from 2016 thru 2017.

d. The [REDACTED] ARNG was able to ascertain from their records that the applicant's leave debt is erroneous. Tour Demobilization Reserve Component leave calculation clearly indicates that his 11 days of leave were to be rolled forward to his next tour of duty, but that transfer never occurred, however LES indicated that he had leave available for taking prior to executing his final leave day.

e. The [REDACTED] ARNG, U.S. Property and Fiscal Office did a review of the applicant's record, and they concurred that he should not have incurred a debt for leave. The necessary documents have been forward to DFAS so that a refund can be provided to him.

f. The opinion of this office was coordinated with the [REDACTED] ARNG.

6. On 26 March 2024, the applicant was provided with a copy of the advisory opinion for comment or rebuttal and afforded 10 days to respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, 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, available military records and National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advising official finding the applicant was on active-duty orders from the period November 2020 thru October 2021 and received prior approval from his chain of command to use 11 days of rollover leave from a previous period of active duty from 2016 thru 2017.

2. The Board determined there is sufficient evidence based on the opine that relief is warranted and the applicant had approval from his leadership to use the 11 days of

excess leave. Based on the preponderance of evidence the Board determined the applicant's request for reimbursement in the amount of \$1,927.12 of his debt for use of excess leave is valid. Therefore, the Board granted relief.

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 notifying DFAS that the applicant's debt for excess leave in the amount of \$1,927.12 is erroneous and reimbursement payment is authorized.

4/4/2024

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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. Army Regulation (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.

2. Department of Defense Financial Management Regulation 7000.14-R, Volume 7a (Military Pay Policy – Active Duty and Reserve Duty), prescribes the criteria for determining creditable service for military members; provides examples for computing valid creditable service; states periods of service that are not creditable for pay purposes; cites conditions for the payment of military pay entitlements; explains the computation of leave and conditions for leave accrual; and provides for situations where enlistments are not valid. Table 1-2 (Absence from Duty in Enlisted Status), rule 1 states authorized leave or authorized excess leave is a creditable period of service. Table 1-11 (Authorized Absence – Effect on Pay and Allowances), rule 1 states a member is absent from duty on authorized leave is entitled to otherwise proper credit of full pay and allowances during the period of absence and the period is charged as leave. Rule 5 states a member is absent from duty on excess leave is not entitled to pay and allowances and the period of absence is not chargeable to accrued leave. Noted 6 of table 1-11 states a member does not accrue leave during periods of excess leave (here referred to as "nonaccrual"). Computation of the number of days involved in an excess leave balance, which accounts for this nonaccrual may result in a total which includes a fraction. Effective with leave taken on or after 1 February 1987, the total is not rounded to eliminate the fraction when pay and allowances are collected for excess leave. The fractional one-half day is considered to occur on the first day of the excess leave involved. Collect pay and allowances for the number of days, to include fractional days.

3. Title 10, United States Code (USC), section, 2774, permits waiver of collection of erroneous payments of pay and allowances if collection would be against equity and good conscience and not in the best interest of the United States.

4. Title 31, USC, section 3711 (Collection and compromise) states, in pertinent part, the head of an executive, judicial, or legislative agency — (1) shall try to collect a claim of the United States Government for money or property arising out of the activities of, or referred to, the agency; (2) may compromise a claim of the Government of not more than \$100,000 (excluding interest) or such higher amount as the Attorney General may from time to time prescribe that has not been referred to another executive or legislative agency for further collection action, except that only the Comptroller General may compromise a claim arising out of an exception the Comptroller General makes in the account of an accountable official; and (3) may suspend or end collection action on a claim referred to in clause (2) of this subsection when it appears that no person liable on the claim has the present or prospective ability to pay a significant amount of the claim or the cost of collecting the claim is likely to be more than the amount recovered.

5. Title 31, USC, section 3716 (Administrative offset) states, in pertinent part, after trying to collect a claim from a person under section 3711(a) of this title, the head of an executive, judicial, or legislative agency may collect the claim by administrative offset. The head of the agency may collect by administrative offset only after giving the debtor (1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section; (2) an opportunity to inspect and copy the records of the agency related to the claim; (3) an opportunity for a review within the agency of the decision of the agency related to the claim; and (4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.

6. AR 600-8-10 (Leave and Passes) prescribes the policies and mandated operating tasks for military absences, including leave, pass, and administrative absence. This regulation is binding on all entities involved in granting leave, pass and other forms of absence from duty.

a. Advance leave is chargeable leave granted in anticipation of the accrual of leave during the remaining period of active duty. To avoid excessive minus leave balances, advance leave will be limited to the minimum amount of leave needed. The amount of leave that will be earned during the remaining period of the current tour of active duty. The current tour of active duty includes current enlistment, excluding extensions that have not become effective for enlisted Soldier.

b. Excess leave is leave in excess of accrued or advanced leave. The Soldier is not entitled to pay and allowances for a period of such leave. Generally, a minus leave balance at the time of release from active duty, discharge, first extension of an enlistment, desertion or death, is excess leave.

c. It states, a Reserve Component Soldier accumulating leave during a period of active service may carry over any leave so accumulated to subsequent periods of active service, even if there is a break in service, if the separation or release is under honorable conditions.

7. Title 10, USC, section 1552 (4)(c) 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.

//NOTHING FOLLOWS//