

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 January 2024

DOCKET NUMBER: AR20230007319

APPLICANT REQUESTS:

- recalculation/adjustment of incurred debt
- repayment of previous recoupment based on this recalculation
- a personal appearance (video/telephonically)

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

- DD Form 149 (Application for Correction of Military Record)
- Real Estate information
- Motion of Default Judgment and Entry of Default
- Judgement for Absolute Divorce Before the Court

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, he provided notification of his 19 November 2010, divorce which should have prompted the adjustment of his Basic Allowance Housing (BAH) entitlement, however the adjustment never occurred. He contests that as a single Soldier in the pay grade of E-5, residing off-post with a mortgage responsibility, he was entitled to receive BAH at a lower amount. As such, from November 2010 – January 2013, his debt amount should have been for a lesser amount and the remaining balance owed should be lower. At this time, the Defense Finance and Accounting Service (DFAS) is recouping the full amount of BAH previously received. He notes that when he raised the concern in 2014/2015 he was advised that this had been taken care of. It was not until 2021, during tax season, that he was made aware of the continued issue because his tax return was being withheld. He provides Real Estate information reflective of real estate taxes paid by the applicant between January 2011 – January 2014.

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

a. On 7 August 2007, the applicant enlisted in the Regular Army for 5 years 17 weeks.

b. On or about 15 February 2008, the applicant was legally married, and on or about 1 April 2009, the applicant and his spouse separated.

c. On 29 September 2010, Headquarters, 1st Advise and Assist Brigade issued Orders Number 107-01 promoting him to sergeant (SGT)/E-5.

d. On 19 November 2010, the applicant's and his former spouse were legally divorced as recognized by the state of NC.

e. On 3 January 2013, the applicant was honorably released from active duty and transferred into the U.S. Army Reserve (USAR) Control Group (Reinforcement), and subsequently enlisted in the Army National Guard (ARNG).

f. On 18 January 2014, the applicant was released from the ARNG and transferred into the USAR Control Group (Annual Training) and on 20 January 2015, the U.S. Army Human Resources Command issued Orders Number D-01-501106 honorably discharging the applicant from the USAR.

4. The applicant did not provide nor does review of his available service records reflect evidence of a DA Form 5960 (Authorization to Start, Stop or Change Basic Allowance for Quarters (BAQ) and/or Variable Housing Allowance (VHA)) reflective of the initiation, termination or adjustment of the applicant's BAH entitlement, a DD Form 139 (Pay Adjustment Authorization), reflective of information pertaining to the recoupment of the his previously received BAH entitlement, or any communication from DFAS concerning the debt amount, justification or payments made.

6. On 8 September 2023, the Office of the Deputy Chief of Staff, G-1, Chief, Military Pay Branch, provided an advisory opinion recommending disapproval of the applicant's request with a recommendation that DFAS provide confirmation of the debt correctness.

a. According to DFAS records, the applicant's debt was established for \$15,237.17 because he did not properly recertify his housing allowance after his divorce in 2010, continuing to receive "with-dependent" BAH entitlements based upon having a spouse. The finance office did not discover the overpayment until the applicant was separated from military service in 2013. To date, \$10,384.40 has been collected from the applicant.

b. Therefore, since the applicant failed to provide any evidence proving that he reported the BAH overpayments to his commander, their office recommended disapproval of his request and to advise him to contact DFAS to verify his debt balance.

7. On 15 September 2023, the applicant was provided with a copy of the advisory opinion to provide comments. As of 12 December 2023, the applicant has not responded.

#### 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. According to DFAS records, the applicant's debt was established for \$15,237.17 because he did not properly recertify his housing allowance after his divorce in 2010, continuing to receive "with-dependent" BAH entitlements based upon having a spouse. The finance office did not discover the overpayment until the applicant was separated from military service in 2013. To date, \$10,384.40 has been collected from the applicant. Therefore, since the applicant failed to provide any evidence proving that he reported the BAH overpayments to his commander, the Board agreed that relief is not warranted, and that the applicant should contact DFAS to verify his debt balance.

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.

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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.
2. Joint Travel Regulation, Chapter 10 (Housing Allowances) provides that a Service member on active duty entitled to basic pay is authorized a housing allowance based on his or her grade, rank, location, and whether he or she has any dependents. If an interlocutory decree of divorce does not provide for support to the spouse, the member is not entitled to BAH for the spouse after the date of the decree unless proof of support

is furnished. Table 10-5 (Date to Stop Housing Allowances based on the Change in Dependent's Status) provides that entitlement to BAH at the "with dependent rate" ends at midnight of the final divorce decree. If a service member in grade E-6 or below without a dependent is offered an assignment of adequate Government quarters or is assigned Government quarters but elects not to occupy such quarters and resides in private quarters at own expense, he or she may be entitled to BAH-Partial.

a. BAH is based on median housing costs and is paid independently of a Service member's actual housing costs. BAH-Partial is authorized when a service member without a dependent is assigned to single-type quarters, or is on either field or sea duty, and not authorized to receive a BAH. BAH-Partial is not authorized during proceed time, leave enroute, and travel time on a permanent change of station (PCS) move unless the member is assigned to single type government quarters and not authorized BAH.

b. Unless specifically authorized elsewhere, Permanent Duty Station (PDS) housing allowance eligibility starts on a Service member's reporting day to a new PDS. If a service member acquires a dependent, BAH at the with dependent rate entitlement begins on the date the dependent is acquired. BAH entitlement terminates the day before the service member occupies or is assigned government quarters.

c. Section 260503 (Partial Housing Allowance) provides that if a service member, in the grade of E-6 or below, without a dependent is offered an assignment of adequate Government quarters or is assigned Government quarters but elects not to occupy such quarters and resides in private quarters at own expense, then the service member is considered to be assigned to government quarters, is not authorized BAH.

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 provides that 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, applicants 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. 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//