

IN THE CASE OF: ██████████

BOARD DATE: 13 September 2023

DOCKET NUMBER: AR20230007800

APPLICANT REQUESTS: waiver of \$84,380.84 debt under Title 10, United States Code (USC), Section 2774 due to overpayment of retired pay by the Defense Finance Accounting Service (DFAS) incurred from 1 December 2013 to 31 March 2019.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Request for Relief – Denial of Waiver of Indebtedness by DAS/Defense Office of Hearing and Appeals (DOHA), 1 May 2023
- DFAS letter, 9 December 2013
- Executive Summary, 20 November 2019
- Memorandum – Subject: Determining Entitlement to Retired Pay Increase Based Upon Service as Commander of a Unified or Specified Combatant Command, 26 September 2019
- Report of Investigation (ROI) for Waiver of Recovery of Indebtedness, 16 February 2021
- Email communication
- Memorandum – Subject: Overpayment of General Officer Retired Pay, 26 August 2019
- Standards for Waiver Determinations, 14 February 2006
- DFAS letter, 25 September 2019
- Memorandum – Subject: Legal Representation of General Officer Retirees Seeking Waiver of Indebtedness Arising from Erroneous Designation as Former Commanders of Combatant Commands, 30 January 2020
- Memorandum – Subject: Determination of Entitlement to Retired Pay increase Based Upon Service as Commander of a Unified or Specified Combatant Command, 10 January 2020
- Army General Officers
- Memorandum – Subject: Investigation into Representations Made Regarding Retired Pay for Former Commanders of Unified or Specified Combatant Commands, 17 January 2020
- Streamlined Debt Collection/Waiver Process
- Medical documents

- Claims Appeals Board Reconsideration Decision, 4 May 2022
- Memorandum – Subject: Reconsideration to the Sustaining of the Determination of DFAS to Deny a Waiver Request in the Amount of \$84,380.84, 28 December 2021
- Memorandum – Subject: Rebuttal to the Denial and Recommendation and Administrative Report dated 29 July 2019; File Number MSH8JE4XX, \$84,380.84, 22 April 2021
- DFAS letter, 29 July 2019
- DFAS – Recommendation and Administrative Report, 29 July 2019
- Appeal Decision, 30 November 2021
- Claims Appeals Board Decision
- DFAS letter, 5 April 2019
- Statement for Waiver of Debt, 10 April 2019
- Retiree Account Statements
- DFAS letter, 3 May 2019
- Claims Appeals Board Reconsideration Decision, 23 December 2008
- DFAS letter, 20 January 2021
- Department of Defense Directive (DoDD) Number 5105.79 (DoD Senior Governance Councils), 19 May 2008
- General Officer Retired Pay

#### FACTS:

1. The applicant states through counsel in pertinent part, that DFAS determined that he was overpaid \$84,380.84 in retired pay between 1 December 2013 – 31 March 2019. The applicant is one of nearly a dozen General Officers that has incurred a debt due to an erroneous pay computation on the part of DFAS in conflict with the Joint Staff Policy. This error has been acknowledged by DFAS and other previous requests for a waiver of this debt have been approved by DOHA. The applicant argues that this disparate treatment is an injustice worthy of relief in that the finding of fault as determined by DFAS ignores the established reality that the Commander, United Nations Command/Combined Forces Command/U.S. Forces Korea billet was considered by the Joint Staff, as a unified command entitled to the higher retirement rate which formed the basis for the debt incurred.

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

a. On 10 May 1975, the applicant was appointed a commission in the Regular Army as an Armor Officer.

b. On 3 June 2010, the applicant was appointed to the rank of General (GEN)/O-10.

c. On 30 November 2013, the applicant was honorably retired from military service. His last assignment was at the United Nations Command/Combined Forces Command/U.S. Forces Korea.

3. The applicant provides the following a:

a. Memorandum – Subject: Request for Relief – Denial of Waiver of Indebtedness by DFAS/DOHA, dated 1 May 2023, reflective of a chronological account of events associated with the applicant's requested relief as provided on behalf of the applicant by the Department of the Army, U.S. Army Military District of Washington, Office of the Staff Judge Advocate. Counsel notes that the applicant was initially notified by DFAS of the incurred debt on 5 April 2019. Following receipt of the notification, the applicant submitted multiple requests for a waiver of the incurred debt between 10 April 2019 – 28 December 2021. However, all submitted requests were denied by DFAS with the final denial by DOHA on 4 May 2022. Counsel provides a historical account of the events preceding the debt determination.

1) The applicant retired from military service on 1 December 2013. Prior to retiring, he served as the Commander, U.N. Command/Combined Forces Command/U.S. Forces Korea (UNC/CFC/USFK). At the time of his retirement, DFAS reviewed and interpreted his duty assignment as qualifying for an adjusted pay rate calculation entitlement of \$20,937.90 per month. Counsel provides that this was a standing interpretation on the part of DFAS that continued from August 2008 – March 2019. During this period, the applicant's 3 predecessor's, serving in the same position, and arguably the commander of the European Command (2013-2016). This information is also detailed in the provided 20 November 2019 Audit Report for the Board's review within the supporting documents. The interpretation made by DFAS is based upon a Joint Staff determination made in 2008, that the UNC/CFC/USFK was considered a unified command and therefore authorized a higher monthly pay rate for persons assigned to command this organization.

2) A formal legal review of this Joint Staff interpretation/policy did not occur until the Department of Defense Office of the General Counsel (OGC) issued an opinion on 26 September 2019, defining "unified" command and the subsequent entitlement to the \$20,937.90 basic pay rate. Counsel argues that this opinion as provided by the OGC raises several issues that must be considered:

i. It took lawyers for the Department of Defense (DoD) to arrive at the conclusion that the UNC/CFC/USFK was not a unified nor specified combatant specified command; the applicant provides that his background as a tanker does not equate.

ii. The OGC opinion delved into the legislative history of Title 10, USC, section 161(c); to include the Fiscal Year 2004 National Defense Authorization

Act (NDAA), Public Law Number 108-136, section 601(b); as well a Fiscal Year 2007 NDAA, Public Law Number 109-364, section 601 (c); regarding the amendment of Title 10, USC, section 1406(i) - to include a review of the legislative history regarding Congressional intent. In doing so, the OGC still reached a conclusion that "Congress' decision to specifically cite subsection 161(c) could be construed as giving the DoD discretion "in the independent application of 161 (c) as it pertains to a military command's "broad, continuing missions." Such discretion could thus qualify a command for status as either unified or specified combatant command.

3) Up until this time, the only legal opinion on this matter was provided by the U.S. Army Office of the Judge Advocate General on 4 January 2008, wherein they questioned whether the USFK was precluded from qualifying as service over a "unified" combatant command for the purposes of determining the basic pay rate. Counsel argues that this, in other words, meant that it was certainly possible and if Army lawyers at the highest level were uncertain of its applicability, then how was the applicant qualified to.

4) Ultimately, whether the prior Joint Staff/DFAS interpretation/policy was correct or not does not change the fact that the interpretation provided was reasonably relied upon as the basis in establishing the retired pay of nearly a dozen General Officers; and specifically, by determining that that their command of purported "unified" commands authorized them the adjusted pay rate. It is a direct finding by DFAS within its Report of Investigation (ROI) for Waiver of Recovery of Indebtedness (16 February 2021); that while UNC/CFC/WSFK was "erroneously identified" as a unified or specified combatant command, the applicant "could reasonably assume that his pay was computed correctly."

5) As previously noted, all other General Officers were relieved of their debt obligations, except for the applicant. Counsel again notes that this treatment requires a closer look. In every other case, the decision to waive the incurred debt was made by DOHA. None of the previous cases underwent a full DFAS waiver adjudication. This occurred because the applicant, in the beginning, was identified as having previously being paid the increased retired pay amount. Counsel argues that this clearly identifies the applicant's differential treatment; an individual input error rather than a systemic DFAS policy issue.

6) Counsel further argues that the DFAS analysis provided on 3 May 2019 is defective. The conclusion that the applicant's overpayment was the result of a singular administrative error is flawed. In fact, the subsequent discovery of the other general officer cases resulted in a significant abeyance while the magnitude of the problem was investigated. This activity also resulted in the applicant's collection being placed in abeyance from 25 September 2019 – 20 January 2021. Despite the findings depicted in the Report of Investigation, DOHA ignored/dismissed said findings noting that "nothing

changed in their analysis." Counsel concludes that there is little doubt that DOHA gave undue deference to DFAS unchanged position in their analysis. Counsel further provides argument to the DFAS/DOHA analysis further contained in its entirety within the supporting documents for the Board's review.

b. DFAS letter, dated 9 December 2013, reflective of the applicant's initial retirement pay notification. He was advised that he would receive a net payment amount of \$12,419.11 for his initial period of entitlement. The applicant's gross pay computation was based upon his 38 years, 6 months, and 21 days of service and active duty pay upon which retired pay was computed (\$20,937.90).

c. Executive Summary, dated 20 November 2019, reflective of the results of an audit of General Officer retired pay conducted at the direction of the former Secretary of the Army (SECARMY) to determine if the Army caused or contributed to inaccurate pay calculations for 8 General Officers. The audit concluded that after reviewing available documentation, it was determined that it did not appear that the Army caused or contributed to the retired pay issues. The audit further revealed that the retired pay issues experienced by the applicant and 3 other General Officers, stemmed from a determination made in 2008, that the UNC/CFC/USFK was considered a unified command. Based on this determination, DFAS ruled that the applicant was entitled to a higher monthly pay rate authorized for General Officers serving in specific positions, to include commander of a unified or specified combatant command. DFAS denied having a formal process to establish and document who qualified for higher monthly retired pay. Further, no systemic issues were identified. This document is provided in its entirety within the supporting documents for the Board's review.

d. Memorandum – Subject: Determining Entitlement to Retired Pay Increase Based Upon Service as Commander of a Unified or Specified Combatant Command, dated 26 September 2019, reflective of the legal basis for determining when a retired general officer is entitled to have his/her retired pay computed using the rate of basic pay prescribed for an officer who serves as a commander of a unified or specified combatant command. For purposes of Chapter 6 of Title 10, USC (Combatant Commands), subsection 161(c)(1) defines the term "unified combatant command" to mean a "military command which has broad, continuing missions and which is composed of forces from two or more military departments." Subsection 161 (c)(2) defines the term "specified combatant command" as a "military command which has broad, continuing missions and which is normally composed of forces from a single military department." This document is provided in its entirety within the supporting documents for the Board's review.

e. ROI for Waiver of Recovery of Indebtedness, dated 16 February 2021, reflective of a detailed explanation of the applicant's debt. Of note is the erroneous identification of the applicant's position within the UNC/CFC/USFK as a unified or specified

combatant command. In result, the applicant's initial retired pay was calculated using a base rate of \$20,937.90. On 22 March 2019, DFAS was notified of the erroneous pay computation. The correct computation should have been based on \$19,566.90 (pay grade O-10 over 38 years of service) resulting in an overpayment amount of \$84,380.84 covering the time period of 1 December 2013 – 31 March 2019. The investigation further concluded that the debt was the result of a misinterpretation of the applicant's orders and was not the result of fraud or misrepresentation by the applicant. Based on the information provided to the applicant, he could reasonably assume that his pay was computed properly.

f. Email communication from the General Officer Management Office to another general officer (General [REDACTED]) previously serving as the Commander, UNC/CFC/USFK in February 2008. The commander was advised that he was entitled to the higher pay rate that is used for combatant commanders. Although the position was not considered a combatant command, it was considered a unified command by the Joint Staff. Based on this determination, General [REDACTED] retirement orders would be amended to reflect that he was identified as being a unified or specified combatant commander from 3 February 2006 until present. This amendment would ensure that his retired pay was computed at the higher rate.

g. Memorandum – Subject: Overpayment of General Officer Retired Pay, dated 26 August 2019, reflective of the U.S. Army, Chief of Staff's recommendation for a waiver of the incurred debt in result of the misinterpretation of the Department of Defense Military pay table. A list of the applicable officers was attached to this request; however, it was not included in this submission.

h. Standards for Waiver Determinations, dated 14 February 2006, reflective of the determining guidance associated with the determination of submitted waiver requests. Debts may be waived only when the collection would be against the equity and good conscious and would not be in the best interests of the U.S. There must be no indication the erroneous payment was solely or partially the result of fraud, misinterpretation, fault or lack of good faith of the applicant.

i. DFAS letter, dated 25 September 2019, reflective of the applicant being advised of the approval of his submitted waiver request extension. In order to receive the benefit of any decision made, the applicant's rebuttal period was extended indefinitely until the review was complete. Therefore, no debt collections would be initiated until the review was completed and he was afforded the opportunity to make a rebuttal, if such an action is required.

j. Memorandum – Subject: Legal Representation of General Officer Retirees Seeking Waiver of Indebtedness Arising from Erroneous Designation as Former Commanders of Combatant Commands, dated 30 January 2020, reflective of

information provided concerning the legal representation of officers seeking waiver of indebtedness. To ensure legal counsel accurately advise their clients, they would be provided with an information paper which describes the streamlined indebtedness waiver procedures currently approved for this situation.

k. Memorandum – Subject: Determination of Entitlement to Retired Pay increase Based Upon Service as Commander of a Unified or Specified Combatant Command, dated 10 January 2020, reflective of the outcome of the audit concerning the retired pay computation for persons erroneously entitled to increased retired pay. A recent DFAS audit of retired pay computations for General Officers in the pay grade O-10 concluded that the retired pay entitlements of certain officers were erroneously computed by using the higher rate of basic pay prescribed for an officer who served as commander of a unified or specified combatant command. The affected officers are not entitled to this increased amount of retired pay because they were not appointed by the President to command a unified or specified combatant command. The Unified Command Plan (UCP) is the directive by which the President identifies the mission, responsibilities, and force structure of the combatant commands, and it is subject to periodic review by the Chairman of the Joint Chiefs of Staff in accordance with section 161 of Title 10, USC. It is accordingly the document upon which determinations of eligibility for this increased pay rate must be based.

l. Army General Officers identified and or affected by the retired pay audit conducted. General [REDACTED], retired in August 2008 and formerly served as the commander, UNC/CFC/USFK. His retired pay was based on the unified or specified combatant commanders provision noting that his retirement orders were amended to indicate that his position was identified as "unified or specified combatant command." This was the only case where retirement orders provided command qualified. The applicant's orders did not state that he held a qualifying command.

m. Memorandum – Subject: Investigation into Representations Made Regarding Retired Pay for Former Commanders of Unified or Specified Combatant Commands, dated 17 January 2020, reflective of the Office of the Under Secretary of Defense request for the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, and DFAS to search all relevant recordkeeping and other systems to ascertain whether any oral or written representations were made by officials to retired officers about the retiree's potential entitlement to the increased retired pay authorized for former commanders of unified or specified combatant commands.

n. Streamlined Debt Collection/Waiver Process, reflective of the process pertaining to debt collection, debt review, waiver processing and repayment plans (if needed). This documentation further provides the applicable pay plans for military personnel effective January 2013 and January 2023.

o. Medical documents reflective of health care (operation) performed/received by the applicant in November 2013

p. Claims Appeals Board Reconsideration Decision dated 4 May 2022, reflective of their decision to uphold the DOHA decision to deny his requested appeal on 30 November 2021 noting that the circumstances in this case, the applicant was provided with documentation that incorrectly reflected his base pay to be \$20,937.90, a rate available only to an officer who served as a commander of a unified or specified combatant command. The applicant did not serve in such a position. Given the significant difference between his base pay at that time, which was \$14,975.10, and the new base pay rate of \$20,937.90 upon retirement, he should have questioned that retired base-pay rate. Yet in his June 2019 appeal, he provided that "nothing in what DFAS provided would have tipped him off to their erroneous use of the commander of a specified or unified combatant command base pay" and further asserted that "nothing in the summary of retired pay account that he received indicated that he was being paid based on the commander of a specified or unified combatant command base pay." However, he reasonably should have been aware his base retired-pay rate exceeded his entitlement, had he reviewed the DFAS summary of retired pay account provided to him in 2013. Instead, he focused his argument in his reconsideration request on the 16 February 2021, DFAS report of investigation completed by a military-pay technician that recommended that waiver be granted. That military-pay technician failed to apply the correct legal analysis, which is required to make such a determination. The DFAS-Indianapolis Director, as the determining official for DFAS Waivers, correctly denied the waiver on 3 May 2019. This document is further provided in its entirety for the Board's review within the supporting documents.

q. Memorandum – Subject: Reconsideration to the Sustaining of the Determination of DFAS to Deny a Waiver Request in the Amount of \$84,380.84, dated 28 December 2021, reflective of the applicant's submitted request for a waiver of the incurred debt related to overpayment of his retirement pay based on a higher rate. The applicant notes that the DOHA appeal decision is factually inaccurate, omits relevant facts, reaches incorrect conclusions of law and the denial of his waiver request is against equity and good conscious. The applicant request's that DOHA reject's DFASs original recommendation (29 July 2019), adopt the factual findings of DFAS report of investigation (16 February 2021) that he could reasonably have assumed that his pay was computed correctly, find that it would be inequitable and against good conscience to deny the waiver given all the circumstances of this case and to grant his request for a complete waiver of the indebtedness. This document is further provided in its entirety for the Board's review within the supporting documents.

r. Memorandum – Subject: Rebuttal to the Denial and Recommendation and Administrative Report dated 29 July 2019; File Number MSH8JE4XX, \$84,380.84, dated 22 April 2021, reflective of the applicant's continued argument of the conclusion



holding him responsible for repayment of the incurred debt. The applicant request's that DOHA reject DFASs original recommendation of 29 July 2019, adopt the findings of DFASs 16 February 2021, report of investigation and grant his waiver request based on the new documentary evidence that he received since his last submitted request to DFAS. In this case, the applicant argues that based on the email between General ■ and the General Officer Management Branch (item 3f. above) in that both General ■ and General ■ also received the same special pay i.e., he was paid exactly what the government intended to pay him. He argues that DFAS admits they used the wrong base pay; he had nothing to do with the policy/statutory interpretation decision that was the basis for the error and the DFAS report of investigation concludes the debt is not the result of any act of fraud, misrepresentation, fault, or lack of good faith on his part and that it was reasonable for him to assume that he was being paid correctly. He was paid in accordance with the rate of pay established by DFAS precedent that the Korea billet qualified for special pay and could not have suspected an error given the complexity of retired pay calculations. This document is further provided in its entirety for the Board's review within the supporting documents.

s. DFAS letter, dated 29 July 2019, reflective of the applicant being notified of DFASs decision concerning his waiver request.

t. DFAS – Recommendation and Administrative Report, dated 29 July 2019, reflective of the information provided to DOHA concerning the applicant's submitted appeal of their decision to deny his request for a waiver. DFAS provides that a review of his Military Retired Pay account revealed that when he retired on 1 December 2013, his Military Retired Pay was calculated utilizing an incorrect base pay rate. He was overpaid resulting in an adjusted debt amount of \$84,380.84. This was the amount being considered for waiver. The applicant requested reconsideration of the initial waiver decision. He contests that at the time of his retirement, he was serving as the commander, UNC/CFC/USFK, which is a Sub-Unified Command. He notes that when he received the summary of retired pay account on 9 December 2013, his gross pay computation was based on a base pay amount of \$20,937.90. The applicant acknowledges the base pay amount for an O-10 was capped at the Executive Schedule amount of \$14,975.10, however he states that he was unaware of the actual base pay amount DFAS would use to calculate his retired pay. In response, DFAS determined that the applicant had not provided any information that would warrant overturning their initial decision. Therefore, they recommended that that initial determination be sustained.

u. Appeal Decision dated 30 November 2021, reflective of the Department of Defense, Defense Legal Services Agency, Defense Office of Hearings and Appeals review of the DOHA decision to deny the applicant's appeal of the DFAS decision to deny his request for a waiver of debt. Counsel provides argument to the determination made citing that the applicant's circumstances satisfied the requirements of the

requested relief. Further that the policy relied upon resulting in the error had been in place for 11 years and relied upon by 3 retired general officers who also served in the same position. Therefore, it was reasonable to assume that his pay was correct. This document is further provided in its entirety for the Board's review within the supporting documents.

v. Claims Appeals Board Decision, reflective several submitted requests for appeal of decisions made by DOHA wherein service members were relieved of debts associated with previously received overpayment of entitlements. These documents are further provided in their entirety for the Board's review within the supporting documents.

w. DFAS letter, dated 5 April 2019, reflective of the applicant being notified that a review of his retired pay account revealed that when he retired, the retired pay base that was used to compute his retired pay was \$20,937.90. That rate was associated with a member who served as a commander of a unified or specified command. A review of his duty assignment revealed that he was not entitled to that rate. As a result of this adjustment, his payment was reduced to \$20,442.00. This change would be reflected in his upcoming payment on 1 May 2019.

x. Statement for Waiver of Debt dated 10 April 2019, reflective of the applicant's submitted justification in support of his request for a waiver of debt. The applicant again denies being aware of the error nor responsible for the actions which resulted in the debt. This document is further provided in its entirety for the Board's review within the supporting documents.

y. Retiree Account Statements reflective of the applicant's pay and entitlements as a retiree effective 25 March 2019; gross pay entitlement of \$20,442.00 – a change from the previous \$21,919.00.

z. DFAS letter, dated 3 May 2019, reflective of the denial of the applicant's submitted request for debt remission. DFAS notes that they verified the adjusted debt amount (\$84,380.84) and therefore denied his request for a waiver noting that he was overpaid a gross amount of \$90,244.00 during the period of 1 December 2013 – 31 March 2019. A detailed account of the determining factors and elements of consideration was also provided to the applicant. The applicant was further advised of his right to appeal the decision. This document is further provided in its entirety for the Board's review within the supporting documents.

aa. Claims Appeals Board Reconsideration Decision, dated 23 December 2008, reflective of a referenced case wherein the service member requested reconsideration of the decision made by DOHA. This document is further provided in its entirety for the Board's review within the supporting documents.

bb. DFAS letter, dated 20 January 2021, reflective of the applicant being advised of his right to rebut the Recommendation and Administrative Report wherein DFAS recommended to DOHA that it uphold DFASs denial of his request for waiver. The applicant was afforded 30 days to submit his rebuttal.

cc. DoDD Number 5105.79, 19 May 2008, reflective of the policy and guidance for Defense Senior Leadership Conference, the Senior Leader Review Group and the Deputy's Advisory Working Group.

dd. General Officer Retired Pay which shows that a review of available documentation was conducted and resulted in "it did not appear that the Army caused or contributed to the pay issues for the eight General Officers." The review included the applicant. The pay issue may have been caused by human error. DFAS personnel potentially processed their pay incorrectly because DFAS did not have a formal process to establish and document who qualified for a unified combatant command or specified command.

#### 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 and available military records, the Board determined the applicant was erroneously overpaid by DFAS. Evidence in the record show the applicant was one of nearly a dozen General Officers that incurred a debt due to an erroneous pay computation on the part of DFAS in conflict with the Joint Staff Policy. This error has been acknowledged by DFAS and other previous requests for a waiver of this debt have been approved by DOHA. The Board found this error is no fault of the applicant and he should not be penalized with an incurred debt of repayment.

2. Furthermore, the agreed the pay issue may have been caused by human error, whereas DFAS personnel potentially processed their pay incorrectly because DFAS did not have a formal process to establish and document who qualified for a unified combatant command or specified command. Based on the preponderance of evidence the Board granted relief for waiver of \$84,380.84 debt under Title 10, United States Code (USC), Section 2774 due to overpayment of retired pay by the Defense Finance Accounting Service (DFAS) incurred from 1 December 2013 to 31 March 2019.

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 that the evidence presented was 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 is authorized a waiver for his debt in the amount of \$84,380.84 under Title 10, United States Code (USC), Section 2774 due to overpayment of retired pay by the Defense Finance Accounting Service (DFAS) incurred from 1 December 2013 to 31 March 2019.

10/2/2023

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 161 (Combatant Commands: Establishment) provides that with the advice and assistance of the Chairman of the Joint Chiefs of Staff, the President, through the Secretary of Defense, shall establish unified combatant commands and specified combatant commands to perform military missions; and prescribe the force structure of those commands. The term "unified combatant command" means a military command which has broad, continuing missions and which

is composed of forces from two or more military departments. The term "specified combatant command" means a military command which has broad, continuing missions and which is normally composed of forces from a single military department.

2. Department of Defense 7000.14-R (Financial Management Regulation) Volume 7A, provides that basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during the calendar year for officers at pay grades O-7 through O-10. This includes officers serving as:

- Chairman or Vice Chairman of the Joint Chiefs of Staff
- Chief of Staff of the Army
- Chief of Naval Operations
- Chief of Staff of the Air Force
- Commandant of the Marine Corps
- Commandant of the Coast Guard
- Chief of the National Guard Bureau or
- Commander of a unified or specified combatant command (as defined in 10 U.S.C. Section 161(c))

3. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. This includes debts caused by erroneous payments to or on behalf of a Soldier if a waiver has been requested and denied in accordance with AR 37-104-4, Chapter 32 and DoDFMR 7000.14 – R, Volume 16, Chapter 4, Paragraph 040407.

a. Soldier's debts to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from: a. Payments made in error to a Soldier. b. Debts incurred while serving on active duty or in an active status as a Soldier. c. Debts acknowledged as valid. d. Debts for which an appeal has been denied.

b. Indebtedness to the Army that may not be remitted or canceled under Title 10, USC, section 7837: b. when the debt is incurred while not on active duty or in an active status.

c. Determining injustice or hardship will be based on the Soldier's awareness of policy or procedures. Past or present military occupational specialty, rank, years of service, and prior experience taken into consideration. The Soldier's monthly income and expenses, additional income, or assets.

d. Additional factors for consideration in determining injustice; the applicant did not know, and could not have known, of the error, or the applicant inquired of a proper authority and was told the payment was correct.

//NOTHING FOLLOWS//