

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230007854

APPLICANT REQUESTS: remission or cancellation of indebtedness for basic allowance for housing (BAH) in the amount of \$12,010.00.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders R-02-200442, 28 February 2022
- DA Form 31 (Request and Authority for Leave), 16 May 2022
- Hotel Receipt, 16 June 2022
- DA Form 1351 (Travel Voucher or Subvoucher), 29 June 2022
- Defense Finance and Accounting Service (DFAS) Form 9098 (Claim for Temporary Lodging Expense (TLE)), 30 June 2022
- DA Form 5960 (BAH Authorization and Dependency Declaration), 30 June 2022
- Correction Request Form for Unit Commander's Finance Report, 14 July 2022
- Unit Transmittal Letter, 19 July 2022
- Memorandum, 55th Medical Detachment Combat Operational Stress Control (COSC) subject: [Applicant] Indebtedness Resubmission, 11 February 2023
- DA Form 2823 (Sworn Statement), 14 February 2023
- Memorandum, 808th Medical Center, subject: [Applicant] Indebtedness Resubmission, 22 February 2023

FACTS:

1. The applicant states he submitted all of his transfer paperwork as soon as he reported to his unit. His request was processed in a timely manner and was approved in July 2022; however, he continued to receive the incorrect amount. He started receiving the correct amount after December of 2022. He further states he is not at fault for the indebtedness.

2. The applicant provides:

a. Orders R-02-200442, 28 February 2022, which show he was ordered to Active Guard/Reserve (AGR) duty from Stoughton, Massachusetts (MA) to Indianapolis,

Indiana (IN). His report date was 6 June 2022. This document further shows he was authorized the following additional instructions:

- Item (A): Travel by two privately owned vehicles is authorized
- Item (B): You are authorized shipment of household good at the with dependents rate
- Item (F): Dependent travel to new permanent duty station in authorized

b. DA Form 31, 16 May 2022, shows the applicant was on Permanent Change of Station (PCS) Leave from 23 May 2022 through 6 June 2022. This document further shows in:

- Item 6 (Leave Address): Cary, North Carolina (NC)
- Item 7 (Organization, Station, Point of Contact (POC) email and Phone Number): 883rd Medical Detachment, Brockton, MA

c. A receipt issued by Drury Hotel, Indianapolis, IN, 16 June 2022, shows he occupied a room, with an additional adult, from 3 June 2022 through 16 June 2022.

d. DA Form 1351, 29 June 2022, shows he traveled from Cary, NC, to Indianapolis, IN, on 3 June 2022. He was accompanied by his spouse. This document further shows in:

- Item 5 (Type of Payment): Dependent(s)
- Item 12 (Dependents): Accompanied
- Item 12b (Relationship): Spouse
- Item 12c (Date of Marriage): 5 June 2018

e. DFAS Form 9098, 30 June 2022, shows he submitted a TLE claim, from 3 June 2022 through 15 June 2022. This document further shows in:

(1) Item 12 (Marital Status): Married.

(2) Section I (List of Dependents you are Claiming TLE for):

- Item 18 (Relationship): Spouse
- Item 19 (Date of Marriage): 5 June 2018
- Item 34 (Departure Date from Old Duty Station): 23 May 2022
- Item 35 (Arrival Date at New Duty Station): 6 June 2022

f. DA Form 5960 shows the applicant requested to change his BAH. The action was approved on 30 June 2022. This document further shows in:

- Item 5 (Duty Location): Indianapolis, IN
- Item 6 (Effective Date of Action): 6 June 2022
- Item 8 (BAH Type): With Dependents
- Item 9 (Marital Status): Married
- Item 11 (Spouses Physical Address): Indianapolis, IN

g. Memorandum, 55th Medical Detachment (COSC), subject: [Applicant] Indebtedness resubmission, 11 February 2023, shows the applicant's battalion commander requested his debt be absolved. He is depending on him to focus on the unit's upcoming mobilization, instead of trying to repay a debt over \$12,000.00 that was caused through no fault of his own.

h. DA Form 2823, 14 February 2023 from the applicant, which states:

(1) During the process of his permanent change of station (PCS), he was made aware of the BAH difference in rates between the state of MA and the state of IN. Upon arrival to his new unit, he submitted a DA Form 5960, in order to process the BAH change, and to avoid overpayment by DFAS and/or any possible recoupment. This action was subsequently approved by his commander on 30 June 2022.

(2) Once he realized he was still receiving the BAH rate for the state of MA, which was the erroneous amount, he promptly notified his senior human resource (HR) officer of the error. The HR officer verified that the action was received by the Fort Knox, Kentucky (KY), finance office in July 2022.

(3) In December 2022, upon further review of his Leave and Earning Statement (LES), it appeared as if the error was finally corrected, he was now going to receive BAH at the rate for the state of IN. However, because the LES reflected a zero balance for the debt, he, and his HR noncommissioned officer (NCO), assumed DFAS forgave the debt, until he received a letter of indebtedness for the amount of \$12,010.00 the following month.

(4) He believes he should not be held responsible for this debt, as he correctly submitted a DA Form 5960, in order to process the BAH change from MA to IN in a timely manner.

i. Memorandum, 808th Hospital Center subject: [Applicant] Indebtedness Resubmission, 22 February 2023, shows the applicant's brigade commander also recommends, in effect, his debt be absolved. He further states the actions the applicant and the unit took were done in a timely manner and he should not be at fault for this action.

3. The applicant's date of marriage is 5 June 2018. It is unclear as to the actual amount the applicant was receiving while stationed in MA and/or IN and when the applicant officially moved his spouse from NC to MA and finally to IN.

4. A review of the applicant's service record shows:

a. He enlisted in the U.S. Army Reserve (USAR) on 1 December 2009.

b. Orders R-05-801630, 31 May 2018, show the applicant was ordered to proceed from Louisburg, NC, to AGR duty in Brockton, MA, with a report date of 25 June 2018. This document further shows he was authorized shipment of household good at the without dependents rate.

c. Servicemembers' Group Life Insurance (SGLI) Election and Certificate of Coverage, 7 September 2018, shows the applicant's spouse as the primary beneficiary. This document also reflects that the spouse's address was in Stoughton, MA.

d. DD Form 93 (Record of Emergency Date), 2 February 2019, also reflects that his spouse's address was in Stoughton, MA.

e. DA Form 5960, shows the applicant requested to change his BAH. The action was approved on 27 April 2022. This document further shows in:

- Item 5 (Duty Location): Brockton, MA
- Item 6 (Effective Date of Action): 6 June 2018
- Item 8 (BAH Type): With Dependents
- Item 9 (Marital Status): Married
- Item 11 (Spouses Physical Address): Cary, NC

f. DA Form 5960, shows the applicant recertified his BAH rate. The action was approved on 4 June 2023. This document further shows in:

- Item 5 (Duty Location): Brockton, Indianapolis, IN
- Item 6 (Effective Date of Action): 6 June 2018
- Item 8 (BAH Type): With Dependents
- Item 9 (Marital Status): Married
- Item 11 (Spouses Physical Address): Indianapolis, IN

5. On 29 February 2024, the Deputy Chief of Staff G-1, Financial Management Specialist, Military Pay Branch, provided an advisory opinion for this case and recommended the Board disapprove the applicant's request to cancel his BAH debt.

a. Army Regulation 637-1 (Compensation & Entitlements Policy), requires Soldiers to review their leave and earnings statement monthly and report any discrepancies immediately to their commander. The applicant did not provide any documentation that he reported the incorrect ZIP code to his commander although he was aware he was receiving the improper housing allowance rate.

b. The applicant’s servicing finance office at Fort Knox, KY, received the required documents to in process him to his duty station and change his BAH in December 2022. His military pay account was updated the following day to in process him to the duty location and stop the BAH being paid at the incorrect ZIP code.

6. On 15 March 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not 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 not 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. One potential outcome was to grant relief based on the DA Form 5960 requesting change from Stoughton, Massachusetts (MA) to Indianapolis, Indiana (IN). The DA Form 5960 recertification show Indiana with an effective date of 6 June 2022 with DFAS acceptance. However, upon review of the applicant’s petition, available military records and Office of the Deputy Chief of Staff-G-1, Financial Management Specialist, Military Pay Branch advisory opinion, the Board majority concurred with the advising official recommendation for denial, finding the applicant does not provide any documentation that he reported the incorrect ZIP code to his commander although he was aware he was receiving the improper housing allowance rate.

2. The Board determined based on the advising opine, there is insufficient evidence to support the applicant’s contentions for remission or cancellation of indebtedness for basic allowance for housing (BAH) in the amount of \$12,010.00. Therefore, the Board denied relief.

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.

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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 15-185 (Army Board for Correction of Military Records (ABCMR)), currently in effect, prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.
  
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. A housing allowance generally is not authorized for a Service member who is assigned to appropriate and adequate Government quarters (see Section 1007 for Government quarters). If a Service member is on excess leave, neither the basic allowance for housing (BAH) nor the overseas housing allowance (OHA) accrues for any excess-leave period.
  - a. Paid when authorized for a Reserve Component (RC) member called or ordered to active duty for 30 or fewer days, except when called to active duty for a contingency. When an RC member is called to active duty for a contingency, even for tours of 30 or fewer days, he or she is authorized the BAH or OHA rate. The Secretary of Defense establishes BAH-RC rates.

b. Housing Allowance Start and Stop Dates. Table 10-4 specifies the date to start BAH or OHA for a Service member with a dependent. Table 10-5 specifies the date to stop housing allowances based on changes in the status of a sole dependent. Table 10-6 specifies the date to stop BAH or OHA for reasons other than a change in the status of a dependent. Situations not covered in these tables are contained elsewhere in this chapter.

(1) Start. Unless specifically authorized elsewhere in this Chapter, Permanent Duty Station (PDS) housing allowance eligibility starts on a Service member's reporting day to a new PDS. OHA starts on the day a Service member obtains private-sector housing. When a home port change is involved, ordinarily a housing allowance based on the rate for the new home port starts on the effective date of the home port change.

(2) Stop. Unless an extension is authorized or approved under par. 100902, or the PCS move is a close proximity move as specified in pars. 100901 and 100902, the OHA and the Family Separation Housing locations within the United States, including Alaska and Hawaii, are paid monthly at the "without-dependents" (FSH-B) allowance or Family Separation Housing locations outside the U.S. are paid monthly at the "without-dependents" overseas (FSH-O) allowances stop on any of the following:

- The day the Service member's OHA, FSH-O, or FSH-B lease end
- The day before the Service member departs due to a PCS order
- The day before the effective date a Service member's assigned ship or unit changes its home port from outside the continental U.S. (OCONUS)

(3) A Service member's lawful spouse and legitimate, unmarried, minor children are always dependents for housing allowance purposes.

3. Army Regulation 600-4 (Remission or Cancellation of Indebtedness), in effect at the time, 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, hard-ship, 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 Army Regulation 37-104-4, Chapter 32 and DoD 7000.14-R, Volume 16, Chapter 4, Paragraph 040407.

a. Determining injustice or hardship. The Assistant Secretary of the Army (ASA) (Manpower and Reserve Affairs (M&RA)), Office of the Deputy Chief of Staff for Personnel, Department of the Army, United States Army, (DCS, G-1), and the Commander in Chief, Human Resources Command (CG, HRC), will follow the following the standards in this regulation to determine injustice or hardship on the basis of the information received. The following factors will be considered:



- The Army's policy in the area of indebtedness to the Army (for example, excess leave or basic allowance for housing while living in Government housing)
- The Soldier's awareness of policy and procedures. Past or present military occupational specialty, rank, years of service, and prior experience are taken into consideration
- The Soldier's monthly income and expenses
- The Soldier's contribution to the indebtedness to the Army by not having the situation corrected
- Additional income or assets (for example, spouse's salary, savings account, and bonds)

b. Additional factors for consideration in determining injustice. The application packet must contain evidence that either:

- The applicant did not know, and could not have known, of the error; or
- The applicant inquired of a proper authority and was told that the payment was correct

c. Additional factors for consideration in determining hardship. Repayment will cause hardship because of excessive monthly expenses due to the following:

- Living in a high cost area
- Living apart from Family members because of military orders
- Number and age of Family members
- Medical and dental bills that cannot be reimbursed
- Other unusual expenses
- Reduction of income due to the loss of spouse's job
- Expenses caused by living standards that are too high or by mishandling of funds are not a basis for a hardship case

d. Commanders are responsible for helping Soldiers resolve personal debts, including errors in pay. The monthly review of the unit commander's finance report will highlight possible erroneous payments. The battalion (BN) Adjutant (S1), brigade combat team (BCT), and/or brigade (BDE) S1, and the Director of Mission Plans and Operations (DMPO) director and/or finance and accounting office (FAO) officer will help commanders resolve indebtedness caused by administrative actions. It is incumbent upon commanders, BN S1s, BCT or BDE S1s, and DMPO director and/or FAO officers involved in identifying indebtedness and processing requests for remission to expedite the process to minimize possible out-of-service debt.

e. Soldiers must make sure that their financial accounts are correct. They must review their monthly Defense Finance and Accounting Service (DFAS) Military Leave

and Earnings Statement (LES) and report errors or discrepancies in a timely manner to the commander and the DMPO director and/or FAO officer.

f. Indebtedness to the Army that may be remitted or canceled under 32 USC 710(c) and under 10 USC 7837. A Soldier's debts to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from:

- Payments made in error to a Soldier
- Payments made in excess of an allowance on behalf of a Soldier
- Debts incurred while serving on active duty or in an active status as a Soldier
- Debts acknowledged as valid
- Debts for which an appeal has been denied (see DoD 7000.14-R, Vol. 16, Chap 4, Para 0404; Army Regulation 37-104-4; or 10 USC 2774)
- Debts for which a waiver has been denied (see DoD 7000.14-R, Vol. 16, Chap 4, Para 0404; Army Regulation 37-104-4; or 10 USC 2774)
- Debts established as a result of financial liability of investigation of property loss (see Army Regulation 735-5)

g. On the basis of the standards of this regulation, a debt incurred to the Army by an ARNG Soldier may be remitted or canceled under certain conditions. The debt must be established in a financial liability investigation of property loss for lost, damaged, or destroyed Government property issued to the Army National Guard (ARNG) (see Army Regulation 735-5). The remission or cancellation may only be requested for losses, damage, or destruction occurring after 30 September 1980.

h. Indebtedness to the Army that may not be remitted or canceled under 32 USC 710(c) and under 10 USC 7837. Debts to the Army will not be remitted or canceled:

- When a Soldier's pay is not reduced promptly in connection with forfeiture of pay imposed by a court-martial sentence or under Uniform Code of Military Justice (UCMJ), Article 15 (UCMJ, Art.15), non-judicial punishment
- When debt is incurred while not on active duty or in an active status
- If a Soldier will receive less than an honorable discharge at time of separation
- When a Soldier is held liable for loss, damage, or destruction of property belonging to another branch of Service
- When debts are due to loss of public funds obtained or converted to own use through fraud, larceny, embezzlement, or other unlawful means
- When debts are due to fines imposed by court-martial sentence

4. Department of Defense 7000.14-R (Financial Management Regulation), Volume 7A, Chapter 26 (Housing Allowance for Service Member in Transit on a PCS), provides If the Service member is enroute from a PDS in the United States, and government quarters at the old PDS were not assigned:

- continue BAH based on the old PDS through the day before the Service member reports to the new PDS, to include TDY en route
- start BAH or OHA based on the new PDS the day the Service member reports to the new PDS

5. Army Regulation 637-1 (Army Compensation and Entitlements Policy), provides Department of the Army (DA) policies for entitlements and collections of pay and allowances for active duty Soldiers. It is used in conjunction with the Department of Defense (DoD) Financial Management Regulation (FMR), Volume 7A. For the purpose of this regulation, active duty is defined in accordance with Title 37, United States Code (37 USC). The term “active duty” means full-time duty in the active service of a uniformed service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary of the Army (SECARMY).

a. Annual basic allowance for housing recertification and supporting documents. As part of the annual iPERMS personnel records review, Soldiers are required to recertify their entitlement to BAH annually by completing a new DA Form 5960. Upload the new DA Form 5960.

b. In-processing Reserve Soldiers. Replacement center will interview the Soldier and review the pay account to ensure that all data is correct, and process transactions to post any changes to the Soldier’s master military pay account (MMPA). The Soldier will complete the required substantiating documents for these changes. If the Soldier is ordered to a station different than the designated mobilization station, transactions must be processed to “arrive” the Soldier at the assigned station.

c. Responsibilities. Soldiers will:

(1) Review their LES every month and immediately report any inaccuracies to their commander and servicing finance officer (FO)/Army military pay officer (AMPO).

(2) Manage their personal financial affairs satisfactorily and pay their just debts promptly.

(3) Provide adequate financial support of a spouse or child or any other relative for which the Soldier receives additional allowances for support.

(4) Comply with the financial support provisions of a court order or written support agreement.

(5) Respond to applications for involuntary allotments of pay, garnishments, and levies within the suspense dates established by DFAS or the commander.

(6) Promptly and accurately report to their commander and servicing FO/AMPO any changes in their personal circumstances that affect their entitlement to pay or the distribution of their pay.

(7) Conduct a finance record review with their S1/military personnel division (MPD)/personnel work center record manager annually.

(8) Recertify their entitlement to housing allowance and verify their dependency status annually during their finance record review if the Soldier is receiving a housing allowance other than BAH partial.

(9) Provide the S1/ Military Personnel Division (MPD)/personnel work center with all documents to support the entitlements they are receiving. Soldiers will not be paid for any entitlement that cannot be validated with a key supporting document (KSD) per AR 600-8-104.

//NOTHING FOLLOWS//