

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20230008024

APPLICANT REQUESTS:

- Amendment to his line of duty (LOD) investigation date to show 14 June 2018 instead of 23 March 2020
- In effect, retroactive disability compensation, and benefits from the Department of Veterans Affairs (VA) to which applicant is entitled thru 14 June 2018
- In effect, retroactive pay for any and all Army allowances he is entitled thru 14 June 2018, including compensation for medical travel expenses in the amount of \$3,283.20
- Payment of his reenlistment bonus in the amount of \$12,000.00
- Compensation for lost wages in the amount of \$15,719.71 due to his inability to work
- Cancellation or remission of a \$4,622.76 Defense Finance and Accounting Service (DFAS) debt related to VA benefits
- Transfer of education benefits (TEB) to his children
- Any and all benefits to which applicant is entitled thru 14 June 2018
- A personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Brief in support of application
- Office of Senator [REDACTED] correspondence
- Character Reference, dated 22 February 2024
- Financial records
- Two self-authored letters
- Order D 118-35, dated 28 April 2021
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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. Counsel states in his legal brief, which is available in its entirety for the Board's review:

a. The applicant requests correction of his service records due to the failure of his unit to conduct an LOD investigation in the year 2018. The LOD investigation, however, was later conducted by his new unit in the year 2020, and subsequently approved. Due to the lateness in processing the LOD, it resulted in the applicant's loss of benefits, income, compensation, rights, an erroneous debt, and other hardships. Furthermore, the injuries he sustained during his service, have prevented him from becoming a commercial pilot and a Warrant Officer.

b. During the delay of the investigation the applicant was eligible and received VA benefits, causing the recoupment of pay he was entitled to for participating in drills with his unit. He also requests to transfer his educational benefits to his children, since he was not advised of this program before his medical retirement. Due to his medical condition, he had many appointments, which required an extensive amount of time for transportation to and from those appointments, he was unable to work. He was not advised or offered any form of compensation such as incapacitation pay or otherwise. He did not receive his reenlistment bonus.

3. The applicant, through counsel, provides:

a. In a character reference from Ms. [REDACTED] (the applicant's mother), which is available in its entirety for the Boards review, explains her son had dreams and aspirations of becoming a pilot. Due to a traumatic brain injury (TBI) he sustained while on active duty, he can no longer pursue his dream, he is facing financial hardship, but he still continues to work and does his best to provide for his family.

b. In two self-authored letters, which are available in their entirety for the Boards review, which states it has been six years since the accident which occurred due to the fault of another Soldier. The military has taken his health, his reenlistment bonus, his education benefits, his dream to become a pilot, and a substantial amount of money in compensation. He served honorably and faithfully for over 11 years, and now feels as if he is being punished for requesting what is owed to him.

c. Numerous financial records, which show his past due and/or delinquent balances for his financial obligations:

- Freedom mortgage: past due in the amount of \$5,412.96
- Stearns Bank: negative balance in his checking account in the amount of \$149.14
- American express credit card: account balance in the amount of \$4,946.46

4. The ABCMR only corrects information for the purpose of corrections or amendments to servicemembers records. In regard to retroactive VA medical benefits, to include disability compensation, and cancelation or remission of a \$4,622.76 debt with the VA, he must contact the VA directly for further assistance. These requests are not within ABCMR jurisdiction nor the purview of this Board and will not be further discussed during the proceedings of this case.

5. The applicant's service record reflects the following:

a. He enlisted in the Army National Guard of the United States (ARNGUS) on 5 March 2010, followed by one extension to his oath of reenlistment on 15 March 2015, for a period of six years.

b. His DD Form 214 shows the applicant was ordered to active duty on 16 June 2011, and was he was honorably released on 1 September 2011 for completion of required service. He completed 2 months, and 16 days of active service. He was transferred back to his [REDACTED] ARNG unit.

c. The applicant's record is void of any documentation that shows he was injured in a government vehicle during his period of service.

d. Orders MM-0310-00004, dated 5 November 2020, show he was ordered to active duty to participate in Reserve Component (RC) managed care evaluation/disability evaluation system and for related medical appointments, on 6 November 2020 to [REDACTED]. His orders state in additional instructions:

(1) He was ordered to active duty for the period of one day plus the time necessary to travel.

(2) He was to proceed from his home or current location in time to report for duty on 6 November 2020.

(3) Upon completion of this duty, unless sooner released, he was to return to his home and upon arrival be released from active duty.

(4) Military Personnel Record (MPRJ) and medical records will be forwarded to duty site.

(5) Government meals, and government quarters are not available.

(6) Funds are subject to availability and issued in anticipation of and contingent upon the enactment of a continuing resolution or defense appropriation act, whichever comes first.

(7) Privately owned Vehicle (POV) is authorized.

(8) Travel voucher must be settled within five days of completion of travel. Vouchers can be settled with the Defense Finance and Accounting Service (DFAS).

e. DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings, shows the PEB convened on 22 April 2021, wherein the applicant was found physically unfit with a recommended disability rating of 40 percent (%), and that the disposition be permanent disability retirement, due to Light sensitivity/Post-trauma vision syndrome (resulting in convergence insufficiency)/visual field contraction, post concussive syndrome/TBI, and vestibular dysfunction/dizziness. Onset of these conditions is June 2018. The conditions were the result of a motor vehicle accident. This condition was found in the line of duty. The applicant concurred with the findings, waived a formal hearing of his case, and did not request reconsideration of his VA rating. This document further shows the PEB made the following administrative determinations:

(1) This condition:

- Was incurred or aggravated in the line of duty in a duty status
- It was not due to intentional misconduct, willful neglect, or unauthorized absence
- It is not permanent and stable

(2) The disability disposition is not based on disease or injury incurred in the line of duty in combat with an enemy of the United States and as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war (5 USC 8332, 3502, and 6303). (This determination is made for all compensable cases but pertains to potential benefits for disability retirees employed under Federal Civil Service.)

(3) Evidence of record reflects the Soldier was not a member or obligated to become a member of an armed force or Reserve thereof, or the NOAA or the USPHS on 24 September 1975.

(4) The disability did not result from a combat-related injury under the provisions of 26 USC 104 or 10 USC 10216.

e. Order D 118-35, dated 28 April 2021, shows the applicant was to be retired because of a physical disability incurred while entitled to basic pay and under conditions that permit retirement for a permanent physical disability. The percentage of disability is 40, with an effective date of retirement of 28 May 2021.

f. NGB Form 22 for the period ending 27 May 2021, shows he was honorably retired from [REDACTED] Army National Guard ([REDACTED] ARNG) due to permanent disability. He completed 11 years, 2 months, and 23 days of service.

6. On 27 August 2024, the NGB in coordination with the [REDACTED] ARNG, the Army National Guard (ARNG) Education Services Branch, the ARNG Line of Duty Branch, and the Physical Disability Agency provided an advisory opinion for this case and recommended the Board disapprove the applicant's request.

a. LOD Investigation was initiated February 12, 2020. It was approved April 7, 2020, with injury date of June 14, 2018. The date of the injury and date of investigation is recorded accurately; no further action can be taken. Additionally, the unit has no record of the Soldier's request for Incapacitation Pay or travel expenses. Upon initiating the LOD Investigation (LODI), the servicemember was counseled regarding the requirement to request such pay.

b. Regarding the applicant's reenlistment bonus request, the Soldier was voluntary reassigned to a non-bonus qualifying unit effective 01 April 2019; Order dated 08 April 2019. Per National Guard Regulation (NGR) 600-7, 1-25. b.12 and AR 601-210, 10-8. a (5) his bonus was terminated. [REDACTED] ARNG is not authorized to issue the reenlistment bonus and therefore relief is not recommended.

c. Additionally, [REDACTED] ARNG cannot validate the debt the applicant incurred, as the debt was incurred from receipt of VA benefits. Per 10 USC 12316 and 38 USC 5304(c) a service member can only be compensated by either the VA or the military but not both.

d. Regarding his request to transfer his education benefits to his children, relief is not recommended. Given that the applicant does not have 90 days or more of qualifying service, he is not eligible for post 9-11 GI Bill.

7. On 28 August 2024, a representative with the Case Management Division (CMD) of the Army Review Boards Agency (ARBA) provided the applicant with a copy of the advisory opinion for review and/or comment.

8. On 11 September 2024, the applicant responded through counsel:

a. The advisory opinion should be set aside because it ignores two main errors and injustices and second and third level effects stemming from these errors:

(1) Army [REDACTED] National Guard failed to timely conduct the line of duty investigation for about 22 months.

(2) [REDACTED] ARNG failed to properly educate the applicant about all benefits.

b. The advisory opinion simply restates the facts underlying the errors and ignores the errors and injustices, it should be set aside, and he should be entitled to relief in this case.

9. The applicant does not provide, and the service record does not show:

- Any documentation to show he was authorized or entitled to a reenlistment bonus in the amount of \$12,000.00
- The LOD investigation
- Documents regarding his medical travel expenses in the amount of \$3,283.20
- Travel Vouchers that reflect the details of his travel to and from [REDACTED], and the amount claimed through DFAS, pursuant to Orders [REDACTED] dated 5 November 2020
- Documents regarding lost wages in the amount of \$15,719.71 due to his inability to work from his injury while on active duty

10. Army Regulation 15-185 (ABCMR), currently in effect, states an applicant is not entitled to a hearing before the Board; however, the request for a hearing may be authorized by a panel of the Board or by the Director of ABCMR.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation, the Board made the following findings and recommendations:

- Amendment to his line of duty (LOD) investigation date: DENY. The Board determined the DD Form 261 accurately reflects an injury date of 14 June 2018 with a LOD determination approval of 7 April 2020. The dates are recorded and consistent with the timeline of events and properly documented. The Board did not find evidence to support an error or injustice in the existing determination. The Board noted the time lapse between the injury date and the approval of the LOD; however determined given the administrative and investigative process involved and the applicant's unit of assignment change. Based on the foregoing, the Board denied relief.
- Retroactive disability compensation and VA benefits: DENY. This is outside the scope of the ABCMR. The ABCMR has no authority to grant VA benefits.
- Retroactive pay for allowances: DENY. The applicant fails to provide any documentation related to medical expenses and/or completed and approved duty documents from unit personnel which were unpaid previously.
- Payment of reenlistment bonus: DENY. Based upon the Soldier's voluntary reassignment to a non-bonus qualifying unit effective 01 April 2019.
- Compensation for lost wages: DENY. Based upon the applicant proper appearing before and concurring with the findings and recommendations of the PEB, the Board concluded there was no error or injustice warranting any additional compensation.
- Cancelation or remission of VA debt: DENY. This is outside the scope of the ABCMR. The ABCMR has no authority to cancel/remit VA debts.
- Transfer of education benefits: DENY. Given that the applicant does not have 90 days or more of qualifying service, he is not eligible for post 9-11 GI Bill.
- Any and all other benefits: DENY. The ABCMR does not grant benefits. The ABCMR only directs changes to military documents based upon errors or injustice being present.

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.

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 (Armed Forces), United States Code, 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 Army Board for Correction of Military Records (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. Army Regulation 15-185 (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. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or

request additional evidence or opinions. 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.

3. Army Regulation 15-185 (ABCMR), states the Army, by law, may pay claims for amounts due to applicants as a result of correction of military records. The ABCMR will furnish the Defense Finance and Accounting Service (DFAS) copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant and settle claims on the basis of the corrected military record. The applicant's acceptance of a settlement fully satisfies the claim concerned.

4. 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, 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.

a. 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)

b. 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). The remission or cancellation may only be requested for losses, damage, or destruction occurring after 30 September 1980.

c. 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

d. 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

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).

6. Title 38, United States Code (USC) (Veterans' Benefits), section 1110 (General - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

7. Title 38, United States Code (USC) (Veterans' Benefits), section 1131 (Peacetime Disability Compensation - Basic Entitlement) states for disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus

disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.

8. Army Regulation 600-8-4 (Line of Duty (LOD) Policy, Procedures, and Investigations) prescribes policies and procedures for investigating the circumstances of disease, injury, or death of a Soldier providing standards and considerations used in determining LOD status.

a. Formal LOD investigation is a detailed investigation that normally begins with DA Form 2173 (Statement of Medical Examination and Duty Status) completed by the medical treatment facility and annotated by the unit commander as requiring a formal LOD investigation. The appointing authority, on receipt of the DA Form 2173, appoints an investigating officer who completes the DD Form 261 (Report of Investigation LOD and Misconduct Status) and appends appropriate statements and other documentation to support the determination, which is submitted to the General Court Martial Convening Authority for approval.

b. The worsening of a pre-existing medical condition over and above the natural progression of the condition as a direct result of military duty is considered an aggravated condition. Commanders must initiate and complete LOD investigations, despite a presumption of Not In the Line of Duty, which can only be determined with a formal LOD investigation.

c. An injury, disease, or death is presumed to be in LOD unless refuted by substantial evidence contained in the investigation. LOD determinations must be supported by substantial evidence and by a greater weight of evidence than supports any different conclusion. The evidence contained in the investigation must establish a degree of certainty so that a reasonable person is convinced of the truth or falseness of a fact.

9. Department of Defense Instruction (DoDI) 1304.31 (Enlisted Bonus Program) provides that the Secretaries of the Military Departments may pay a bonus under the Enlisted Bonus Program (in accordance with Title 37, USC, section 331) to persons or members, as appropriate, to support recruiting and retention efforts in designated military skills, career fields, units, or grades, or to meet some other condition or conditions of service imposed by the Secretary of the Military Department concerned. To be eligible the member signs an agreement with the Secretary of the Military Department concerned to serve on active duty or in an active status for a specified period, in a designated military specialty or skill, career field, unit, or grade, successfully completes training and becomes qualified in a designated skill or career field, if

completion of such training and technical qualification forms the basis for which the bonus is paid.

10. Title 10, United States Code (USC) (Armed Forces), section 1556 (Ex Parte Communications Prohibited) requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicant's (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//