

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 April 2024

DOCKET NUMBER: AR20230009348

APPLICANT REQUESTS:

- remission or cancellation of his remaining debt in the amount of \$12,812.58
- personal appearance before the Board via telephone/video

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

- DD Forms 149 (Application for Correction of Military Record)
- U.S. Army Human Resources Command (HRC) Memorandum - Subject: Remission or Cancellation of Indebtedness - Applicant, 28 June 2023

FACTS:

1. The applicant states:

a. The entire amount deducted by the Defense Finance and Accounting Service (DFAS) was an injustice and created an undue severe financial hardship on him and his family during his 1-year active duty assignment at the Office of the Under Secretary of Defense for Intelligence and Security (OUSD I&S) at the Pentagon. The pay and allowances were deducted for 2 months as DFAS indebtedness (see prior HRC financial injustice/forgiveness hardship packet).

b. This correction should be made as a severe financial hardship was created by DFAS deducting 2 months of pay and allowances (\$25,625.16) from case number RN 37-2-10XX decided on 28 June 2023. This indebtedness occurred after his security clearance was inactivated due to the adjudication process being incomplete from his periodic reinvestigation. The investigation was initiated while he was still assigned to Fort Bliss, TX, Joint Task Force-North Southwest Border Mission on 1-year active duty orders. The adjudication process was not completed, and the clearance was inactivated causing this hardship. This was due to incompetence on the part of the investigation process as nobody ever tried to contact him even though they had his personal email and cell phone number.

c. When he arrived at the Pentagon on temporary duty orders prior to receiving Permanent Change of Station (PCS) orders, he checked with the security manager to verify his clearance status as he was still not sure if it was completed upon arrival to his current assignment. The security manager checked the clearance and said it was "good to go" and his investigation was "complete." Since he verified the status of his clearance, he was blindsided and completely surprised when he was told his clearance was not active and he would be immediately taken off his PCS orders which caused this financial hardship.

d. In his opinion, this was an overreach, and he should have been given time to resolve this issue with his clearance and remain on orders as this was an error in the "Consolidated Adjudication Facility" and investigation process and security manager office. The entire packet was submitted to HRC for remission and half was awarded which is why he is requesting an appeal for the entire amount of indebtedness taken from DFAS during this time at the Pentagon.

2. Having prior enlisted service in the U.S. Navy and Army National Guard (ARNG), National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he was discharged to accept appointment as a commissioned officer on 4 December 1998.

3. A DA Form 71 (Oath of Office - Military Personnel) and an NGB Form 337 (Oath of Office), dated 5 December 1998, show he was appointed as a Reserve commissioned officer and executed his oath of office and he was appointed as a second lieutenant (2LT)/O-1 in the Washington ARNG; he executed his oath of office.

4. On 8 March 2001, NGB Form 337 shows he was appointed as a first lieutenant (1LT)/O-2 in the Arizona ARNG and executed his oath of office. He was also appointed as a 1LT in the Florida ARNG on 29 July 2004.

5. On 21 June 2006, the Florida National Guard, Office of the Adjutant General, Deputy Chief of Staff Personnel, Personnel Security indicated that he had seen the security clearance granted by the commander of the U.S. Army Central Clearance Facility for the applicant and he was cleared for authorized access to classified information at the SECRET level based on a completed periodic reinvestigation. The applicant's investigation was completed on 12 August 2002 and final clearance granted 3 September 2002.

6. He was released from the Florida ARNG and was transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement) on 15 January 2013. NGB Form 22 shows he completed 8 years, 5 months, and 17 days net service this period.

7. On 5 July 2013, HRC published Orders Number C-07-309733, which assigned the applicant to the Standby Reserve (Inactive List), effective 5 July 2013.
8. On 30 April 2014, HRC published Orders Number C-04-405894, which assigned the applicant to his USAR unit in Hawaii, effective 23 April 2014.
9. His record contains orders showing he was ordered to active duty on multiple occasions in support of Operation Enduring Freedom (OEF) and Active Duty for Operational Support (ADOS) for Reserve Component (RC).
10. On 28 December 2017, HRC issued the applicant a Notification of Eligibility for Retired Pay at Non-Regular Retirement (20-Year Letter).
11. On 8 May 2018, HRC published Orders Number HR-8128-00013, which ordered the applicant to active duty for 365 days for Contingency Operation for Active Duty Operational Support (CO-ADOS) in support of "Operation Enduring Freedom (OEF)-Horn of Africa", with a report date to Italy, on 1 August 2018.
12. On 12 July 2019, HRC published Orders Number HR-9193-00032, which ordered the applicant to active duty for 365 days for CO-ADOS in support of "OEF-CONUS Support Base (CSB)", with a report date to the U.S. Army Cyber Command Element, Fort Belvoir, Virginia, on 1 August 2019. The additional instructions show it was an accompanied PCS move during the assignment and the applicant was authorized movement of dependents and household goods from current permanent duty station to new duty location at Government expense. On 21 August 2019, HRC amended the order changing the end date to 30 September 2019.
13. On 25 September 2019, HRC published Orders Number HR-9268-00012, which ordered the applicant to active duty for 366 days for CO-ADOS in support of "OEF-CSB Worldwide Individual Augmentee", with a report date to the U.S. Army Element Headquarters Central Command, MacDill Air Force Base, FL, on 1 October 2019. The additional instructions state it was an accompanied PCS move during this assignment and the applicant was authorized movement of dependents and household goods from current permanent duty station to new duty location at Government expense.
14. On 27 August 2020, Orders Number B-08-005802, published by HRC, promoted the applicant to the rank/grade of lieutenant colonel (LTC)/O-5, effective on with a date of rank of 19 August 2020.
15. On 22 September 2020, HRC published Orders Number HR-0266-00012, which ordered the applicant to active duty for 365 days for CO-ADOS in support of border mission, with a report date to U.S. Army Element Joint Task Force North, Fort Bliss, TX, on 1 October 2020. The additional instructions state it was an accompanied PCS move

during this assignment and the applicant was authorized movement of dependents and household goods from current permanent duty station to new duty location at Government expense. On 9 July 2021, HRC amended the orders changing the end to 15 July 2021.

16. On 13 July 2021, HRC published Orders Number T-07-116146, which ordered the applicant to ADOS-Reserve Component (RC) for 60 days, with a report date to "OUSD (I&S) Washington DC", on 16 July 2021. The orders show he would be attached to the U.S. Army Element Office of the Secretary of Defense and lists the purpose as "21W."

17. The applicant was honorably released from active duty and transferred to the USAR Control Group (Reinforcement) on 15 July 2021. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 9 months and 15 days net active service this period.

18. On 17 September 2021, HRC published Orders Number T-09-118017, which ordered the applicant to ADOS-RC for 14 days, with a report date to "OUSD (I&S) Washington DC." The orders show he would be attached to U.S. Army Element Office of the Secretary of Defense and lists the purpose as "211."

19. On 21 September 2021, HRC published Orders Number T-09-118117, which ordered the applicant to ADOS-RC for 365 days, with a report date to "OSD (I&S) Washington DC", on 1 October 2021. The orders show he would be attached to U.S. Army Element Office of the Secretary of Defense and lists the purpose as "22W." On 2 November 2021, HRC amended the orders changing the period to 34 days.

20. On 29 December 2021, HRC published Orders Number T-12-135876, which ordered the applicant to ADOS-RC for 276 days, with a report date to "OUSD Washington DC", on 29 December 2021. The orders show he would be attached to U.S. Army Element the Joint Staff " and lists the purpose as "22W". On 10 May 2022, HRC amended the orders changing the period to 196 days.

21. On 20 May 2022, HRC published Orders Number HR-2140-00038, which ordered the applicant to active duty for 730 days for CO-ADOS in support of OEF, with a report date to the CONUS Replacement Center, Fort Bliss, TX, on 13 July 2022. The orders show his duty at Patch Barracks, Germany, and the additional instructions state it was an unaccompanied PCS move this assignment and the applicant was authorized movement of household goods at the without dependent rate. Movement of dependents was not authorized.

22. The applicant was honorably released from active duty and transferred to the USAR Control Group (Reinforcement) on 10 April 2023. DD Form 214 shows he completed 8 months and 28 days net active service this period.

23. On 3 June 2023, the Department of the Army published Orders Number 0004935156.00, which assigned the applicant to his unit in Germany, effective 13 July 2022.

24. The applicant provides a memorandum, dated 28 June 2023, wherein the HRC, Chief, Soldier Program and Services Division, responded to the applicant's request for remission or cancellation of indebtedness and stated:

a. The application for remission or cancellation of indebtedness for the applicant in the amount of \$25,625.16 has been reviewed and is partially approved for \$12,812.58. The review determined that no grounds exist to remit or cancel the remaining portion based on injustice and/or hardship. Please advise the applicant to contact the local finance office for repayment.

b. The applicant can apply to the Army Board for Correction of Military Records (ABCMR) for further review if they feel an injustice occurred. Guidance for this process can be found in Army Regulation (AR) 15-185 (ABCMR). This response does not imply that an error or injustice occurred. Neither will mere submission of the request guarantee a formal hearing or result in any favorable action taken. Each case is considered on the evidentiary information provided with the final determination based on the merits of the individual case.

c. If the remitted monies are found at a later date to be public funds that were obtained or converted to own use through fraud, larceny, embezzlement, or any other unlawful means, the debt will be reinstated.

25. The applicant did not provide a copy of his request submitted to HRC for remission/cancellation and his record did not contain the complete request. However, HRC provided a copy of his request to this Board. This information is provided below, in summary:

a. The applicant's TS/SCI security clearance was suspended because while enrolled in the continuing vetting process a financial issue was uncovered.

b. Timeline of events:

(1) On 3 May 2021, a Continuous Vetting report was created by the Department of Defense, Defense Security Cooperation Agency and forwarded to the U.S. Cyber Command, Fort Gordon, GA.

(2) On 2 June 2021 the U.S. Cyber Command, Fort Gordon, GA submitted a memo stating the applicant was no longer attached.

(3) On 15 November 2021, AHRC spoke with the applicant by phone. The applicant supplied all the requested documents and information. A request for adjudication was created and submitted to the Department of Defense Consolidated Adjudications Facility (DoD CAF).

(4) On 19 December 2022, the applicant was granted his TS/SCI eligibility (as recorded in the Defense Information System for Security (DISS)).

c. The notes in DISS and the Soldier Management Services - Web Portal (SMS Web) show there were many back-and-forth conversations between AHRC and the DoD CAF, also internal with the DoD CAF attempting to reach a determination.

d. HRC notes in SMS show the applicant's eligibility was granted on 1 June 2022.

e. This request was incomplete when initially received and returned without action based on lack of receipts and required documents from the Army Military Pay Office (AMPO). We received receipts and page 6 of the DA Form 3508 (Application for Remission or Cancellation of Indebtedness) signed by finance, however never received a memorandum with a recommendation to approve, approve in part, or disapprove from the AMPO. Unable to verify period of debt. Contacted HQDA, G1 and asked if we could process without a recommendation from the AMPO and Mr. JD Riley said yes, go ahead and process without.

BOARD DISCUSSION:

1. The applicant's contentions, the military record, and regulatory guidance were carefully considered. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted.

2. The evidence of record and the record of proceedings both allude to a debt but neither specifically explain how, why, or when the applicant accrued a debt. Additionally, AHRC notes the applicant's request was incomplete when initially received and returned without action based on a lack of receipts and required documents from the Army Military Pay Office (AMPO). AHRC was unable to verify the specific period/reason for the debt. AHRC did end up waiving half of the debt, but they did so without a recommendation from the AMPO or a full picture of the reason and period of the debt.

3. The Board determined the applicant's record should be corrected, as appropriate, to fully relieve the applicant of the remainder of his debt. The Board feels this action is in the best interest of the Army to waive the applicant's debt based on special skill set and the desire of the Army to retain highly skilled Soldiers.

REFERENCES:

1. Army Regulation (AR) 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

a. 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

b. Additional factors for consideration in determining hardship:

- 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

2. Title 10, United States Code, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.

3. AR 15-185 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that 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.

//NOTHING FOLLOWS//