

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230009372

APPLICANT REQUESTS:

- remission of debt associated with previous receipt of disability compensation and military pay/entitlements at the same time
- a personal appearance via video or telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Orders Number 004338, 10 October 2011
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 31 January 2012
- Department of Veterans Affairs (DVA) letters
- Defense Finance and Accounting Service (DFAS) letters

FACTS:

1. The applicant provides in pertinent that he was placed on active duty on 3 October 2011. He contacted the DVA and requested that his disability compensation be placed on hold. He was later advised that during this time the DVA was converting files from analog to digital and many files were misplaced during the process, to include his. Upon completion of this period of active duty, he out processed. He retired from the U.S. Army Reserves (USAR) on 30 June 2012. In 2021 after being retired from the USAR for over 9 years, he was advised by the DVA that an overpayment of disability compensation had been made (October 2011 – January 2012). The original debt was just over \$6,400.00, with a \$177.00 per month repayment requirement until the full amount was recouped. In 2022, he submitted his request for retirement pay. In February of 2023, DFAS notified him of a \$14,315.62 debt in relation to previous election to waive his entitlement to military pay to receive his disability compensation pay for Fiscal Year (FY)/Calendar Year (CY)2012. He was further advised that the action was initiated by his former unit during a 2021 audit. His former unit denies initiating this action. DFAS has been unable to provide supporting documentation for this action. He denies signing any documentation waiving his entitlement military pay due to the simple fact that he

made more money in his Reserve status than he did from the DVA. Currently, DFAS is deducting \$380.00 monthly from his retirement pay.

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

a. After serving in the Regular Army for over 5 years as a 31K (Combat Signaler), on 19 February 1987, the applicant was released from active duty and transferred into a Troop Program Unit (TPU) within the USAR.

b. On 20 February 1987, the applicant reenlisted in the USAR for 1 year. The applicant completed several reenlistments following this period with his last action occurring on 11 December 2004, wherein he reenlisted indefinitely.

c. On 1 August 2001, the applicant was issued a Notification of Eligibility for Retired Pay at Age 60 (20-year letter).

d. On 10 October 2011, the 81st Regional Support Command issued Orders Number 004338 ordering the applicant to Active-Duty Operational Support (ADOS) – Reserve Component on 3 October 2011 for a period of 121 days.

e. On 31 January 2012, the applicant was honorably released from active duty.

f. On 3 April 2012, Headquarters, 63rd Regional Support Command issued Orders Number 12-094-00002 reassigning the applicant to the Retired Reserve, effective 30 June 2012.

g. His DA Form 5016 (Chronological Statement of Retirement Points) shows he completed 31 years, 6 months, and 29 days of qualifying service towards non-regular retirement.

h. On 24 April 2021, he submitted an Application for Retired Pay Benefits at age 60. Based on his active duty mobilization, he was authorized 12 qualifying months of reduced age retirement of 19 April 2022.

i. On 4 April 2022, HRC published Orders C04-292112 placing him on the retired list in his retired grade of first sergeant effective 19 April 2022.

3. The applicant provides the following a:

a. DVA letters reflective of the applicant being advised that his proposal to repay \$3,445.39 worth of previously received DVA compensation and pension payments was approved. Payments would be recouped at a rate of \$177.00 per month beginning April 2023.

b. DFAS letters reflective of the applicant being advised of a \$14,315.62 debt associated with his election to waive military pay to receive DVA benefits for FY/CY 2012.

4. The applicant did not provide a DVA Form 21-8951-2 (Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances) reflective of his election to waive VA compensation for any period of active duty to include FY/CY 2012.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. There is insufficient evidence provided by the applicant or contained in the record that explains the debt. The DFAS letter informed him that pursuant to 31 USC 3716, his debt(s) has been referred to the DFAS Debt and Claims Management Operations for collection. This debt resulted from the applicant waiving military pay in order to receive VA benefits in 2012. The Board found the DFAS letter more persuasive than the applicant's contention because the applicant also received a letter from the VA informing him that his proposal to repay \$3,445.39 worth of previously received VA compensation and pension payments was approved. This implies the applicant knew of him waiving military pay in order to receive VA benefits in 2012.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
	:	:	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] [REDACTED]

[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. Title 10 United States Code (USC), Section 12316 (Payment of Certain Reserves While on Duty) provides a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of the Reserve's earlier military service is entitled to a pension or disability compensation, and who performs duty for which the Reserve is entitled to compensation, may elect to receive for that duty either—

- the pension or disability compensation to which the Reserve is entitled because of the Reserve's earlier military service; or –
- if the Reserve specifically waives those payments, the pay and allowances authorized by law for the duty that the Reserve is performing

2. Title 38 USC, Section 5304(c.) (Prohibition Against Duplication of Benefits) provides that pension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay.

3. Department of Defense Financial Management Regulation 7000.14-R, Chapter 57 (Reserve Entitlements for Active Duty), Paragraph 2.4 (Waiver of Benefits) provides that a Reserve Component (RC) member who is drawing disability compensation or pension from the U.S. for prior military service, and who performs duty for which the member is entitled to pay, may elect to receive either:

- the disability compensation or pension to which the member is entitled because of the member's earlier military service; or –
- if the RC member specifically waives those payments, the pay and allowances authorized by law for the duty that the member is performing

A member who receives military pay and allowances loses entitlement to Department of Veterans Affairs (VA) disability compensation or VA pension payments for the corresponding number of days of AD or number of inactive duty periods performed. Thus, receipt of military pay for 2 inactive duty periods performed in 1 calendar day results in the loss of VA disability compensation or VA pension benefits for 2 calendar days.

4. Army Regulation (AR) 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

5. Title 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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//