

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 January 2025

DOCKET NUMBER: AR20230010181

APPLICANT REQUESTS: cancelation or remission of a \$13,501.58 Defense Finance and Accounting Service (DFAS) debt related to Veterans Affairs (VA) waivers of compensation or pension to receive military pay and allowances.

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

- DD Form 149 (Application for Correction of Military Record)
- VA Form 21-8951 (Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances), 18 February 2019
- VA Form 21-4138 (Statement in Support of Claim), 18 February 2019
- VA Form 21-8951, 17 July 2019
- A letter issued by the Evidence Intake Center, VA, 6 September 2019
- A letter issued by the Debt Management Center, VA, 16 September 2019
- A letter issued by the VA, 27 September 2019
- VA Form 21-8951, 10 July 2020
- A letter issued by the VA, 21 August 2020
- A letter issued by the Debt Management Center, VA, 5 March 2021
- A letter issued by the Debt Management Center, VA, 8 March 2021
- A letter issued by DFAS, 19 April 2023
- A letter issued by DFAS, 22 May 2023
- Two CD Forms 303-6 (Verification of Inactive Duty Training (IDT)/ Active Training (AT)/Schedule (SCH))

FACTS:

1. the applicant states, in effect, he is requesting cancelation or remission of a \$13,501.58 for Fiscal Years (FY) 2017, 2018, and 2019, DFAS debt related to VA waivers of compensation or pension to receive military pay and allowances. He paid the debt in full, however the VA later advised him, his elections "were not processed correctly" and on 3 October 2019, issued a refund on payments made for FY 2017 and FY 2018. Additionally, he rendered payment to the VA for FY 2019 on 8 March 2021 in the amount of \$327.23, and considered the debt paid in full since he received no further communication, in regard to this matter. It wasn't until he was issued a letter by DFAS on 19 April 2023, that he was notified of the \$13,501.58 debt to the U.S. Government.

He made numerous attempts to contact DFAS, his unit, his local military pay office and the VA, to obtain additional information regarding his debt, however he was advised that the debt and/or the origin of the debt cannot be found.

2. The applicant provides:

a. VA Form 21-8951 dated 18 February 2019, shows the applicant elected to waive military pay and allowances for FY 2017 for 67 training days in order to retain VA compensation or pension.

b. VA Form 21-4138 dated 18 February 2019, shows the applicant received his first payment of VA benefits and compensation on 27 September 2017 (FY 2018), this payment was for retroactive benefits of his original claim submitted in the year 2012. Up until this point he was unaware his claim was approved, and he was already compensated for any and all training days he completed in 2017. This document further shows he is requesting guidance on how to correct this matter.

c. VA Form 21-8951 dated 17 July 2019, shows the applicant elected to waive military pay and allowances for FY 2018 for 21 training days in order to retain VA compensation or pension.

d. In a letter issued by the Evidence Intake Center, VA dated 6 September 2019, shows the applicant received military pay and VA Disability Compensation for FY 2018 at the same time. As a result, his VA Disability Compensation was reduced based on his agreement or non-response to a letter dated issued to him by the VA on 10 June 2019, in regard to the 35 drill days he completed in FY 2018.

e. In a letter issued by the Debt Management Center, VA dated 16 September 2019, shows the applicant was overpaid \$1,164.81 more than entitled to receive. Since he is currently receiving VA benefits, they planned to withhold \$98.00 until the amount he was overpaid is recouped. The withholding was scheduled to begin in December of 2019.

f. In a letter issued by the VA dated 27 September 2019, a review of the applicant's file shows that his 2017 and 2018 drill pay elections were not processed correctly. On his elections for 2017 and 2018, he checked the option "I elect to waive military pay and allowances for the days indicated in order to retain my VA compensation or pension". The VA should not have adjusted/withheld VA benefits based on his elections. They are removing their prior adjustments for FY 2017 and FY 2018 and refunding the money to him.

g. VA Form 21-8951 dated 10 July 2020, shows the applicant elected to waive military pay and allowances for FY 2019 for 6 training days in order to retain VA

compensation or pension.

h. In a letter issued by the VA dated 21 August 2020, shows the VA corrected his drill pay days for FY 2019, by removing 19 days from the originally charged 19 drill pay days because he elected to waive military pay and allowance for the 6 drill pay days indicated on his VA Form 21-8951.

i. In a letter issued by the Debt Management Center, VA dated 5 March 2021, shows the applicant was overpaid \$327.23 more than entitled to receive. Since he is currently receiving VA benefits, they planned to withhold \$28.00 until the amount he was overpaid is recouped. The withholding was scheduled to begin in August of 2019.

j. In a letter issued by the Debt Management Center, VA dated 8 March 2021, shows the applicant rendered payment in the amount of \$327.23, and his account was now paid in full.

k. In a letter issued by DFAS dated 19 April 2023, shows the applicant was notified of his indebtedness to the U. S. Government in the amount of \$13,501.58, with a payment due date of 19 May 2023.

l. In a letter issued by DFAS dated 22 May 2023, shows the applicant received the final notice of his indebtedness to the U. S. Government in the amount of \$13,501.58, with a payment due date of 22 June 2023.

m. Two CD Forms 303-6 that show the applicant attended training as follows:

- From 21 October 2017 through 4 November 2017, for a total of 15 days
- From 6 January 2018 through 7 January 2018, for a total of 2 days
- From 4 May 2018 through 4 May 2018, for a total of 1 day
- From 6 May 2018 through 6 May 2018, for a total of 1 day
- From 14 July 2018 through 15 July 2018, for a total of 2 days
- From 13 October 2018 through 13 October 2018, for a total of 1 day
- From 1 June 2019 through 2 June 2019, for a total of 2 days
- From 11 April 2019 through 12 April 2019, for a total of 2 days
- From 13 April 2019 through 13 April 2019, for a total of 1 day

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

a. He enlisted in the Army National Guard (ARNG) on 17 August 2001.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was ordered to active duty on 24 February 2005, and was honorably released on 1

February 2006, after the completion of required active service. He completed 11 months, and 1 day of active service. He was awarded and/or qualified for the following awards:

- Army Achievement Medal
- Army Reserve Components Achievement Medal
- Army Service Ribbon
- Global War on Terrorism Service Medal

c. DA Forms 4836 (Oath of Extension of Enlistment or Reenlistment), show the applicant extended his service as follows:

- On 22 January 2008, for six years
- On 12 of August 2014, for six years

d. A DA Form 199 (Physical Evaluation Board (PEB) Proceedings), shows a PEB was convened on 10 June 2020, wherein the applicant was found physically unfit with a recommended disability rating of 60 percent (%), and that the disposition be permanent disability retirement.

e. Order D 175-10, dated 23 June 2020, shows he was released from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit retirement for permanent physical disability, with an effective date of 28 July 2020.

f. National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service), shows he was honorably discharged from the Alabama Army National Guard (ALARNG), on 27 July 2020, after eighteen years, 11 months, and 11 days of service. His rank/grade at the time of discharge was sergeant (SGT)/E-5. He was awarded and/or qualified for the following awards:

- Army Service Ribbon
- National Defense Service Medal
- Army Achievement Medal
- Army Reserve Components Achievement Medal
- Global War on Terrorism Service Medal
- Army Commendation Medal
- Alabama National Guard Active Duty Basic Training Ribbon
- Alabama National Guard Faithful Service Medal

4. On 18 November 2024, the NGB in coordination with the ALARNG, provided an advisory opinion for this case and recommended the Board disapprove the applicant's

request for remission of debt being collected from DFAS. He was paid for this time from both VA benefits and Military Pay and Allowances. The debt is a result of double payment and is valid.

a. The applicant received Military pay and allowances for FY 2017, FY 2018, and FY 2019. Soldier appeared on DA form 1379 for military training that was coded to be paid. The form VA 21-8951 filled out by the Soldier waived military pay and allowances for 94 days of training during this time to receive VA benefits IAW Title 10, USC 12316.

b. The \$327.23 he paid to the VA was a separate debt for over payment of benefits. Soldier received VA benefits for this time, and ALARNG confirmed the Soldier was also paid for Inactive Duty Training and Annual Training the Soldier had waived. Soldier owes the \$13,501.58 for the military pay and allowances he waived but was paid. Debt is not erroneous.

5. On 21 November 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. He did not respond.

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 findings and recommendations outlined in the NGB advisory opinion and the lack of any rebuttal of those findings and recommendation submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

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.

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. 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

3. 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).

4. Title 10 (Armed Forces), U.S. Code, 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//