

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230010207

APPLICANT REQUESTS:

- cancellation or remission of his indebtedness in the amount of \$2,171.03
- a personal appearance before the Board via video or telephone

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

DD Form 149 (Application for Correction of Military Record).

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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. The applicant states in effect, there is a suspicious debt on his credit report; however, he was separated from the Army National Guard (ARNG) in 2013 and at that time, he did not have any financial liability on his record. He contacted the Defense Finance and Accounting Service (DFAS) and he was advised there were no notes in the financial system regarding a debt. Though the ARNG sent a DFAS Debt Account letter for INSBFWBXX in the amount of \$2,171.03. The ARNG sent the debt in April 2023, which was 10-years after his separation. This is not his debt and requests for it to be removed from his records and the repayment of monies which he paid.

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

a. On 28 March 2007, the applicant enlisted in the ARNG.

b. On 30 March 2007, Orders Number 7089016, issued by the Military Entrance Processing Station, the applicant was ordered to initial active duty for training, effective 21 August 2007.

c. On 24 January 2008, the applicant was released from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed

5-months and 4-days of active service.

d. On 27 January 2009, the applicant was discharged from the ARNG for unsatisfactory participation and received a General Under Honorable Conditions characterization of service. National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant completed 1-year, 5-months, and 20-days of service.

e. On 17 February 2009, Orders Number 048-640, issued by the Joint Force Headquarters (HQs), - Arizona, the applicant was discharged from the ARNG, effective 27 January 2009 with a General Under Honorable Conditions characterization of service.

f. On 30 June 2010, the applicant enlisted in the ARNG.

g. DD Form 214 shows the applicant was ordered to active duty on 8 September 2010. He was honorably released from active duty on 14 December 2010. It also shows he completed 3-months and 7-days of active service.

h. On 26 July 2011, Orders Number 207-101, issued by the Joint Force HQs – Arizona, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 20 August 2011.

i. The applicant was honorably released from active duty on 28 September 2012. DD Form 214 shows the applicant completed 1-year, 1-month, and 9-days of active service.

j. On 11 January 2013, the applicant's commander notified him of the initiation of separation for unsatisfactory participation due to the receipt of 16 unexcused absences within a 1-year period.

k. The applicant acknowledges the initiation of separation: however, the document is not dated. He:

- waived right to counsel
- waived right to submit a written statement
- there was no automatic upgrade of character of service, must apply to the Army Discharge Review Board or Army Board for Correction of Military Records
- consideration by either board did not imply upgrade would be granted

- l. On 8 February 2013, the applicant was discharged from the ARNG for unsatisfactory participation and issued a General Under Honorable Conditions characterization of service.
- m. On 28 February 2013, Orders Number 059-604, issued by the Joint Force HQs – Arizona, the applicant was discharged from the ARNG, effective 8 February 2013, with a General Under Honorable Conditions characterization of service.
- n. On 4 August 2016, the applicant enlisted in the Regular Army.
- o. On 7 November 2016, the applicant's duty status was changed from present for duty to Absent without Leave (AWOL).
- p. On 8 November 2016, the applicant's commander notified the Provost Marshal Office he was reported as AWOL, effective 7 November 2016.
- q. On 30 November 2016, the applicant was charged with being AWOL from his appointed place of duty on or about 7 November 2016.
- r. On 1 December 2016, the applicant's Organizational Clothing and Individual Equipment (OCIE) record shows the applicant's initial issue was on 14 November 2012 and he completed a partial turn in on 13 October 2016 at which time no items remained on his OCIE record.
- s. On 8 December 2016, the applicant's duty status was changed from AWOL to Dropped from Rolls.
- t. On 7 November 2017, the applicant was apprehended by the Clark County, NV, law enforcement and returned to military control.
- u. On 16 November 2017, the applicant's duty status was changed from AWOL to returned to military control.
- v. On 16 November 2017, the applicant's duty status was changed from AWOL to present for duty.
- w. On 31 January 2018, the applicant was notified by his immediate commander of the initiation of separation under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separation), paragraph 14-12c (1) (misconduct – AWOL).
- x. On 31 January 2018, the applicant acknowledged the initiation of separation and his rights.

y. On 1 February 2018, after consulting with counsel the applicant:

- requested consideration by an administrative separation board
- requested a personal appearance before the board
- did not submit statements on his own behalf
- requested representation by counsel
- may encounter substantial prejudice in civilian life
- may be ineligible for many or all benefits as a veteran under Federal and State laws

z. On 7 February 2018, the applicant's intermediate commander recommended he be discharged with a General Under Honorable Conditions characterization of service.

aa. On 13 February 2018, the applicant's senior commander recommended he be discharged with a General Under Honorable Conditions character of service.

bb. On 7 May 2018, after consult with counsel the applicant voluntarily waived consideration by an administrative separation board contingent he receive no less than a General Under Honorable Conditions character of service.

cc. On 7 June 2018, the applicant's senior commander recommended the conditional waiver be granted and he be separated with a General Under Honorable Conditions characterization of service.

dd. On 12 June 2018, the separation authority denied the applicant's request for a conditional waiver.

ee. On 7 July 2018, the applicant's immediate commander recommended the conditional waiver be granted and he be separated with a General Under Honorable Conditions characterization of service.

ff. On 20 August 2018, the administrative separation board found the applicant was AWOL from 7 November 2016 through 16 November 2017 which was supported by a preponderance of the evidence. The findings warranted he be separated with a General Under Honorable Conditions characterization of service. The separation authority approved the findings of the board.

gg. On 11 September 2018, a legal review determined the proceedings were legally sufficient. A majority of the board members found, based upon a preponderance of evidence the applicant was AWOL from 7 November 2016 through 16 November 2017 and recommended he be separated from the U.S. Army with a General Under Honorable Conditions characterization of service. The applicant did not raise any errors in response to the administrative separation proceedings.

hh. On 2 October 2018, the separation authority directed the applicant be discharged from active duty with a General Under Honorable Conditions characterization of service.

ii. On 11 October 2018, Orders Number 284-0505, issued by the U.S. Army Combined Arms Support Command, the applicant was discharged from active duty, effective 19 October 2018, under the provisions of AR 635-200.

jj. On 19 October 2018, the applicant was discharged from active duty under the provisions of AR 635-200, paragraph 14-12c (1) with a General Under Honorable Conditions characterization of service. DD Form 214 shows the applicant completed 1-year, 2-months, and 6-days of active service. It also shows the applicant had lost days during the period of 7 November 2017 through 16 November 2017.

kk. On 1 December 2018, the transition point determined the applicant was not indebted to the U.S. Government.

4. On 8 January 2024, in the processing of this case, DFAS provided an email regarding the applicant's request for cancellation or remission of indebtedness. The official stated the applicant had a debt in the amount of \$2,157.30 for the recoupment of loss or damage to government property or equipment which was paid in full. Documentation was not available.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. Upon review of the applicant's petition and available military records, the Board determined there is sufficient evidence to support the applicant's contentions for cancellation or remission of his indebtedness in the amount of \$2,171.03 and repayment of funds. The Board noted based on the evidence in the record, the applicant turned in his equipment and he was not provided any documentation of a balance due for equipment. The record is absent such documentation stating the applicant has a balance due to the Army. As such, the Board agreed remission of funds collected should be reimbursed and correction to his records is warranted. Therefore, the Board granted relief.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by notifying DFAS that the applicant is entitled to cancellation or remission of his indebtedness in the amount of \$2,171.03 and repayment of funds collected.

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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.

ADMINISTRATIVE NOTES:

1. Reference the enclosed request for correction of military records from the subject individual to correct his DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending January 24, 2008, by:

- a. Delete: Item 24: (Character of Service): Uncharacterized
  - b. Add: Item 24: Honorable
2. A review of the records listed below (enclosed) is sufficient to substantiate correction of the DD Form 214 without action by the Board.
- DD Form 214 service ending January 24, 2008
  - Army Regulation 635-8 (Separation Processing and Documents)

#### REFERENCES:

1. Title 10, USC, 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 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. 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 based on this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.
3. 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 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.
4. AR 735-5 (Property Accountability Policies) in effect at the time, contains concepts and guidelines for establishing and maintaining the Command Supply Discipline Program (CSDP).
  - a. Paragraph 13-3, mandatory initiation of a financial liability investigation of property loss a. Initiate and process a financial liability investigation of property loss to account for lost, damaged, or destroyed Government property when negligence or willful misconduct is suspected as the cause, and the individual does not admit liability and refuses to make voluntary reimbursement to the Government for the full value of the loss less depreciation.

b. Paragraph 13-5, chain of command for processing financial liability investigations of property loss, process a DD Form 200 through the chain of command for the individual responsible for the property at the time of the incident if the individual is subject to this regulation.

c. Paragraph 13-6 (Time constraints for processing financial liability investigations of property loss), initiate and process DD Form 200 within a specific number of days, following the discovery of the loss or damage of Government property, as prescribed in paragraph 13-8. When delayed beyond the below listed processing times, the person responsible for the delay will prepare a written statement explaining the reason for the delay and attach it to the DD Form 200 as an exhibit. Total processing time equals the difference in days between the date of discovering the discrepancy and the date the DD Form 200 is approved. The time used to notify the individual of the financial liability officer's recommendation and the approving authority's decision to hold the respondent financially liable per paragraph 13-34 and paragraph 13-42 is not included. Subtract one date from the other, less the time used to notify the individual, to determine the total processing time. Subparagraph b. U.S. Army Reserve and/or Army National Guard. Under normal circumstances, do not exceed 240 calendar days total processing time.

d. Paragraph 13-8 (Time constraints for initiation of financial liability investigations of property loss), Initiate financial liability investigations of property loss within the following time limits: b. (U.S. Army Reserve and Army National Guard), the USAR will initiate and present financial liability investigations of property loss to the appointing authority or approving authority as appropriate not later than 75 calendar days after the date of discovering the discrepancy. The ARNG will initiate and present financial liability investigations of property loss to the appointing authority or approving authority as appropriate not later than 75 calendar days after the date of discovering the discrepancy. All ARNG investigations will then be forwarded to the State USPFO who will serve as the final review authority.

e. Paragraph 13-42 (Respondent's Rights), a. Members of the Army, employees, and members of other Services having a reciprocal agreement with the Army may have approved charges of financial liability involuntarily withheld from their Federal pay. This also applies to former members of the Army. Before individuals are held financially liable, they must receive notice and the opportunity to exercise their rights. The memorandum with a copy of the DD Form 200 with all exhibits will be hand delivered to the person found financially liable. If the individual is not available locally, the memorandum will be forwarded by certified mail, return receipt requested. The memorandum will inform the individual that collection efforts will begin 30 calendar days (ARNG 60 calendar days) from the date delivered or mailed. The individual has the right to:

- inspect and copy Army records relating to the debt



- obtain free legal advice relating to the assessment of financial liability
- request reconsideration of the assessment of financial liability based on legal error
- request remission or cancellation of the indebtedness (enlisted personnel only)
- request extension of the collection period
- submit an applicant to the Army Board of Correction of Military Records to request reconsideration, a hearing, or remission or cancellation of indebtedness when they believe the findings were unjust

f. Paragraph 13-50 (Actions resulting from reopening a financial liability investigation of property loss), d. Repayment of amounts previously collected. Property listed on a DD Form 200 may be recovered after assessment of financial liability is approved, or the assessment may have been reversed by the approving or appeal authority. If so, an amendment will be prepared, citing the specific alterations, and attached to the DD Form 200 as an exhibit. A copy of the amendment will be attached to a memorandum directing repayment of the value of the recovered property to the individual, as a "collection erroneously received."

g. Paragraph 14-27 (Personal clothing and organizational clothing and individual equipment), a. The commanders of Active Army, USAR, and ARNG members, and ROTC cadets are responsible for initiating financial liability investigations of property loss when property issued from a CIF becomes lost, damaged, or destroyed, and none of the methods cited in chapter 12 can be used to obtain relief from responsibility. Additionally, the commanders of USAR and ARNG members and ROTC cadets are responsible for initiating financial liability investigations of property loss when property issued from a clothing initial issue point becomes lost, damaged, or destroyed. b. The following applies to the loss of personal clothing and OCIE when a USAR member, ARNG member, or ROTC cadet stops participating in training sessions (unsatisfactory participant whose whereabouts is unknown) and has not returned their personal clothing and/or OCIE. If the FAO or USPFO cannot make collections because no pay is due, the DD Form 200 will be forwarded to the servicing claims office for collection.

//NOTHING FOLLOWS//