

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 April 2024

DOCKET NUMBER: AR20230010584

APPLICANT REQUESTS: in effect, receive separation pay in the amount of \$27,512.64 (pre-tax) or to receive his Department of Veterans Affairs compensation pay.

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

- Two DD Forms 149 (Application for Correction of Military Record)
- 2003 W2
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Basic Pay Chart Effective 1 January 2003

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. The applicant states:

a. Defense Finance and Accounting Service (DFAS) records show he received separation pay totaling \$27,512.64 before taxes and \$20,634.48 after taxes. The applicant's 2003 W2, the year of his separation clearly shows he did not receive separation pay, or any other payment, beyond his standard pay for service from January through November 2003. His total pay received, per his W2 for fiscal year 2003 was \$23,976.54.

b. The applicant's DD Form 214 reflects he did not qualify for separation pay. His VA benefits are being withheld, due to this error.

c. The applicant would like this error corrected either through removal of the false statement of pay or to actually receive the separation pay that was withheld. He did not receive any form of separation pay and his VA benefits are being withheld until the full amount is paid back. He never received the payment that is being withheld.

3. The applicant provides the following documents:

a. His 2003 W2, which shows his wages, tips, and other compensation totaled \$23,976.54.

b. Basic Pay Chart Effective 1 January 2003 shows an E-5 with over 10 years of service was paid \$2,236.80 per month.

4. The applicant's service record contains the following documents:

a. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 15 December 1992 and entered active duty on 13 August 1993. He reenlisted in the Army on 9 May 1997.

b. DA Form 4991-R (Declination of Continued Service Statement) dated 13 March 2002 shows the applicant declined to continue his service for recruiting duty. The form states he was not eligible for separation pay.

c. DD Form 214, shows the applicant was honorably discharged on 30 November 2003, in the rank of sergeant/E5. He had completed 10 years, 3 months, and 18 days of active duty service. In item 18 (Remarks) it states the applicant was not eligible for separation pay because he signed a declination for continued service statement.

d. The applicant's service record was void of documentation showing he received separation pay.

5. On 14 November 2023, DFAS responded via email to a request from the ABCMR regarding the applicant's out of service debt. They stated the applicant does not have a separation pay debt; however, he did have a debt in the amount of \$318.48. A screen print showing the applicant's debt does not indicate what the debt was for.

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/was not warranted.

2. The applicant signed a declination of continued service statement, wherein he declined to continue his service for recruiting duty, which states he was not eligible for separation pay; item 18 (Remarks) of his DD Form 214 states the applicant was not

eligible for separation pay because he signed a declination for continued service statement; and an email from DFAS states the applicant does not have a separation pay debt. The Army does not owe the applicant nor is ne entitled to separation pay.

3. The Department of the Army and Department of Veterans Affairs are separate governmental agencies, each working under their own sets of laws and regulations. The Board does not have the authority to address the applicant's request for Department of Veterans Affair compensation pay.

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.

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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.

REFERENCES:

1. Title 10, U.S. 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 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 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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 will decide cases based on the evidence of record. The ABCMR is not an investigative agency.

3. Title 10, USC, section 1174 (Separation pay upon involuntary discharge or release from active duty) states that a regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay unless the Secretary of the Army determines that the conditions under which the member is discharged do not warrant payment of such pay. The amount of separation pay which may be paid to a member is 10 percent of the product of their years of active service, 12 times the monthly basic pay to which he/she was entitled at the time of his/her discharge or release from active duty; or one-half of the amount computed under clause (1). As a condition of receiving separation pay under this section, a person otherwise eligible for that pay shall be required to enter into a written agreement to serve in the Ready Reserve of a Reserve component for a period of not less than three years following the person's discharge or release from active duty.

4. Department of Defense Instruction (DODI) 1332.29 (Involuntary Separation Pay (Non-Disability)) states, in pertinent part, half payment of non-disability ISP is authorized to Service members of the Active and Reserve Components who are involuntarily separated from Active Duty/Active Service and who meet each of the five conditions in the following paragraphs:

a. The Service member meets the criteria for active service specified in Paragraph 3.1.a.(1).

b. The Service member's separation is characterized as "honorable" or "general (under honorable conditions)", and none of the conditions in Paragraph 3.4. apply.

c. The Service member is being involuntarily separated by the Military Service concerned through either the denial of reenlistment or the denial of continuation on Active Duty (AD)/Active Service (AS), or the Service member is being separated instead of board action as provided in DoDI 1332.30, under one of the following specific conditions: (1) The Service member is not fully qualified for retention and is denied reenlistment or continuation by the Military Service concerned, as provided for in DoDI 1332.14 or DoDI 1332.30, under any of the following conditions: (a) Weight control failure. (b) Parent or custody of minor child. (c) Military personnel security program. (d) Disability that existed before service (e) Mental or physical conditions and circumstances not constituting a disability. (f) Alcohol or drug abuse rehabilitation failure. (g) Failure to meet minimum retention standards. (2) The Service member is being separated under a Service-specific program established as a half-payment level by the Secretary of the Military Department concerned within the authority of Section 1174 of Title 10, USC. (3) The Service member, having been denied reenlistment, extension, or continuation on AD/AS by the Military Service concerned in accordance with Paragraphs 3.1.b.(3)(a) and 3.1.b.(3)(b), accepts an earlier separation from AD/AS.

d. The Service member has entered into a written agreement with the Military Service concerned to serve in the Ready Reserve, as provided for in Paragraph 3.1.a.(4).

e. The Service member has signed the disclosure statement in Paragraph 3.1.a.(5), acknowledging that if the Service member later becomes eligible for retired or retainer pay and/or disability compensation from the Department of Veterans Affairs, the full amount of ISP received will be deducted from such pay.

//NOTHING FOLLOWS//