

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 December 2024

DOCKET NUMBER: AR20230010595

APPLICANT REQUESTS: in effect,

- Cancellation/remission of her debt and tax garnishment associated with the Central Issue Facility (CIF) charges
- refund of all withheld taxes

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3161 (Request for Issue or Turn-In), 21 April 2021
- National Guard Bureau (NGB) Form 22 (National Guard Report of Separation and Record of Service)
- A letter issued by the Defense Finance and Accounting Service (DFAS), 1 September 2022
- An email

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, in effect, she is requesting cancellation/remission of her debt and tax garnishments associated with CIF charges, and a refund of all withheld taxes due to an error caused by CIF. At the time the property was issued to the applicant, CIF annotated an incorrect number for items issued. For example, although she was issued only one magazine pouch, CIF records inaccurately show she was issued two. Her unit supply noticed the discrepancy and processed a Financial Liability Investigation of Property Loss (FLIPL), that shows the error. She proceeded to turn in the correct amount of equipment, and yet still incurred an erroneous debt of over \$3,500.00, resulting in a wage garnishment. She was later honorably discharged from the New York Army National Guard (NYARNG).

3. The applicant provides:

a. DA Form 3161, 21 April 2021, shows the excess equipment that was issued to her for a grand total of \$3,368.00.

b. A letter issued by DFAS, 1 September 2022, notifying her that the debt has been referred to the DFAS debt and claim management operations for collection. She was to pay the debt in full within 30 days from 1 September 2022. If she did not pay in full within 30 days, interest at the current treasury department tax and loan rate and administrative charges will be assessed. Furthermore, if she did not act within 60 days, her account will be past due. Delinquent debts are reported to the department of treasury, which can cause collection of the debt by offsetting federal income tax refunds. The applicant has noted that the letter was sent to an incorrect address, and she had since moved, causing a three-month delay in her receiving the notification.

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

a. She enlisted in the Army National Guard of the United States (ARNGUS), on 5 December 2012.

b. The applicant has service in Afghanistan from 10 May 2017 through 28 January 2018.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows she was ordered to active duty in support of Operation Freedom's Sentinel (Afghanistan) On 24 March 2017. She was honorably released on 8 March 2018, after the completion of required active service. She completed 11 months, 15 days of active service, and 8 months 19 days of foreign service. She was awarded and/or qualified for the following awards:

- Afghanistan Campaign Medal with one bronze service star
- Army Commendation Medal with C Device
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Army Service Ribbon
- Overseas Service Ribbon
- Armed Forces Reserve Medal with M Device
- North Atlantic Treaty Organization Medal

d. NGB Form 22, shows she was honorably discharged from the NYARNG, on 4 December 2020, after eight years of service. Her rank/grade at the time of discharge was sergeant (SGT)/E-5.

5. On 30 September 2024, the National Guard Bureau provided an advisory opinion. They recommended approval.

a. On 22 January 2021, a DD Form 200 (Financial Liability Investigation) was initiated by the NYARNG CIF for the applicant's failure to return issued clothing and equipment prior to her separation from the NYARNG. This action resulted in a debt to the United States Government in the amount of \$3,405.60.

b. Records in ISM (unknown system), provided by the Nebraska Army National Guard (NEARNG,) show that a DA Form 3161 was created on 21 April 2021 due to the full recovery of the original loss document (Document Number W16B9L10221008V). As of 21 April 2021, the FLIPL was closed. This office recommends approval of her request for out of service debt remittance.

6. On 3 October 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. She did not respond.

#### BOARD DISCUSSION:

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 request and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's request, available military records and National Guard Bureau- Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding that evidence provided by the Nebraska Army National Guard (NEARNG,) shows that a DA Form 3161 was created on 21 April 2021 due to the full recovery of the original loss document As of 21 April 2021, the FLIPL was closed. The Board determined there is sufficient evidence to support cancellation/remission of the applicant's debt and tax garnishment associated with the Central Issue Facility (CIF) charges of \$3,405.60 to include refund of all withheld taxes.

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's debt and tax garnishment associated with the Central Issue Facility (CIF) charges of \$3,405.60 has been remitted and refund of all withheld taxes.

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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 (Armed Forces), 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 Army Board for Correction of Military Records (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)), 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.

3. Army Regulation 600-4 (Remission or Cancellation of Indebtedness), in effect at the time, 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

4. Army Regulation 735-5 (Property Accountability Policies), prescribes the basic policies and procedures in accounting for Army property and accounting for lost, damaged, or destroyed Army property.

a. Accountability. Accountability is the obligation of a person to keep records of property, documents, or funds. These records show identification data, gains, losses, dues-in, dues-out, and balances on hand or in use.

b. Responsibility. Responsibility is the obligation of an individual to ensure Government property and funds entrusted to their possession, command, or supervision are properly used and cared for, and that proper custody, safekeeping, and disposition are provided.

(1) The obligation of a person to ensure all Government property for which they have receipted, is properly used and cared for, and that proper custody, safekeeping, and disposition are provided. Direct responsibility results from assignment as an accountable officer, receipt of formal written delegation, or acceptance of the property on hand receipt from an accountable officer.

(2) The obligation of a person to exercise reasonable and prudent actions to properly use, care for, safeguard, and dispose of all Government property issued for, acquired for, or converted to a person's exclusive use, with or without receipt.

c. Army property. Army property is all property under the control of the Department of the Army (DA) except property accounted for as owned by a non-appropriated fund (NAF) activity. It must be accounted for on a property account unless specifically exempted by an Army Regulation. Property leased by an Army activity is considered Army property for accounting purposes. Property loaned to a non-Army activity remains Army property. Real property accounts for all assets on the installation regardless of

who funded the construction or pay for sustainment (except privately owned) will be reflected in the installation real property inventory.

d. Remission or cancellation of indebtedness (enlisted personnel only). When financial liability assessed through a financial liability investigation causes financial hardship on an enlisted Soldier, they may submit an application for remission or cancellation of the debt, DA Form 3508 (Application for Remission or Cancellation of Indebtedness) through their commander, per AR 600-4.

e. Financial liability. The statutory obligation of an individual to reimburse the Government for lost, damaged, or destroyed Government property as a result of negligence or abuse.

f. Negligence. The failure to act as a reasonably prudent person would have acted under similar circumstances. An act or omission that a reasonably prudent person would not have committed, or omitted, under similar circumstances and which is the proximate cause of the loss of damage to, or destruction of Government property. Failure to comply with existing laws, regulations, and/or procedures may be considered as evidence of negligence.

g. Proximate cause. Before holding a person financially liable for a loss to the Government, the facts must clearly show that the person's conduct was the "proximate" cause of the loss, damage, destroyed, or theft (LDDT). That is, the person's acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the LDDT, and without which the LDDT would not have occurred.

h. Loss. Before holding a person financially liable for a loss to the Government, the facts must clearly show that the person's conduct was the "proximate" cause of the loss or damage. That is, the person's acts or omissions were the cause that, in a natural and continuous sequence, unbroken by a new cause, produced the loss or damage, and without which the loss or damage would not have occurred.

5. 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//