

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 7 June 2024

DOCKET NUMBER: AR20230012111

APPLICANT REQUESTS: recalculation of severance pay based on Title 10, United States Code (USC), Section 1212(b) for 11 years vice the severance pay he received calculated at 10 years of service.

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

- DD Form 149 (Application for Correction of Military Record)
- Title 10, USC, Section 1212 - Disability Severance Pay extract
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings), 4 April 2022
- U.S. Army Physical Disability Agency (USAPDA) Memorandum - Subject: Physical Disability Separation, [Applicant], 19 April 2022
- Orders Number D 109-16, 19 April 2022
- Orders Number D 118-14, 28 April 2022
- Defense Finance and Accounting Service (DFAS) Leave and Earnings Statement (LES), 16 September 2022
- Florida National Guard Office of the Adjutant General Memorandum - Subject: Request for Corrections to Discharge Packet for [Applicant], 11 March 2023

FACTS:

1. The applicant states his severance pay was not calculated properly per Title 10, USC, Section 1212(b). Total severance pay was calculated for 10 years and not 11 years. Orders Number D 109-16 were amended by Orders Number D 118-14 to reflect sergeant first class (SFC)/E-7 with 10 years, 11 months, and 24 days. Per the law the total for 11 years and 2x his monthly base pay should have been \$97,693.20. Pay given was \$88,881.20, ending up \$8,881.20 short. In compliance with the law Title 10, USC, Section 1212, paragraph (b) his records should be corrected. He informed personnel prior to being discharged, of the law and they still processed it incorrectly. He filed a Congressional with his Congressman G_ B_ after getting zero communication from his unit to State level. He finally received a memo stating they could not resolve the issue at the State level.

2. A review of the applicant's records show:

a. He enlisted in the Vermont Army National Guard on 17 August 1999 and transferred to the Florida Army National Guard (FLARNG) on 23 July 2002.

b. On 16 August 2010, the FLARNG published Orders Number 228-025, which promoted the applicant to the rank/grade of staff sergeant (SSG)/E-6, with a Date of Rank (DOR) of 16 August 2010.

c. On 4 April 2022, DA Form 199 shows an Informal PEB found the applicant physically unfit and recommended a rating of 20 percent and that his disposition be separated with severance pay. He concurred and waived a formal hearing of his case, and elected to be separated with severance pay or separated without entitlement to benefits, as applicable. He understood that if he elected separation with severance pay, he forfeited his rights to receive retired pay when he would otherwise be eligible to receive such pay.

d. On 19 April 2022, Headquarters, USAPDA published Orders Number D 109-16, which honorably discharged the applicant, effective 19 May 2022. The additional instructions state, in relevant part, "(a) You are authorized disability severance pay in grade E-6 based on 10 years, 11 months, 24 days of service as computed under Section 1208, Title 10, USC."

e. On 28 April 2022, Headquarters, USAPDA published Orders Number D 118-14, which amended Orders Number D 109-16 to read "(a) You are authorized disability severance pay in grade E-7 based on 10 years, 11 months, 24 days of service as computed under Section 1208, Title 10, USC."

f. On 19 May 2022, the applicant was honorably discharged under the provisions of National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 6-351(8), for being "medically unfit for retention per Army Regulation 40-501 (Standards of Medical Fitness). National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows in item 5a (Rank) "SFC."

3. The applicant provides:

a. Title 10, USC, Section 1212 - Disability Severance Pay extract, which states, a part of a year of active service that is six (6) months, or more is counted as a whole year. Emphasis is also added to how severance pay is calculated.

b. USAPDA Memorandum - Subject: Physical Disability Separation, [Applicant], dated 19 April 2022, wherein, the Deputy Commander stated, the attached Department of the Army Orders Number D 109-16, dated 19 April 2022 authorizes discharge with severance pay of the applicant. Request the applicant's unit take action to ensure the subject Soldier is paid severance pay in accordance with the provisions of Department

of Defense (DOD) Financial Management Regulation (FMR), Volume 7A, Chapter 35, Section 350501 (effective July 2020). National Guard Soldiers are advised to contact the United States Property and Fiscal Office Military Pay Division, located at the State National Guard headquarters, for assistance with inquiries regarding severance payment or any pay related issues.

c. DFAS LES dated 16 September 2022, which shows, the applicant's pay grade, years of service, branch, entitlements (other credits in the amount of \$8,812.08), and disability severance payments. The applicant notes he was paid \$88,812.00 and he should have been paid \$97,693.20.

d. Florida National Guard Office of the Adjutant General Memorandum - Subject: Request for Corrections to Discharge Packet for [Applicant] dated 11 March 2023, wherein, the G1 Director, Personnel, stated, in relevant part, the applicant is not eligible for retirement since he accepted a severance package. Once accepting severance package, he signed acknowledging that we would not get a retirement and would [get] a payout instead. (Per Regulation Chapter 3.4). We cannot correct anything having to do with pay that is decided by USAPDA, Retirements and Separations at Fort Sam Houston, TX.

4. On 14 March 2024, the NGB, Chief, Special Actions Branch provided an advisory opinion and recommended approval of the applicant's request. The advisory official stated:

a. The applicant was discharged honorably on 19 May 2022 from the FLARNG. The applicant accepted a severance package as he was found 20 percent disabled by a physical disability board per AR 635-40. He is requesting a recalculation of severance pay received as he believes he is entitled to \$8,881.20 more as calculations should have been done on 11 years not 10 years. The applicant submitted his DFAS LES, discharge order, and physical disability board determination for review.

b. After review of the applicant's submission, he served for 10 years, 11 months, and 24 days. He was paid severance pay for 10 years of service. Title 10, USC, Section 1212(b) states a part of a year of active service that is six months, or more is counted as a whole year. Applicant's severance pay should have been calculated for 11 years of service. The FLARNG recalculated severance pay for 11 years vice 10 years and the applicant is due an additional \$8,881.20.

c. It is the recommendation of this office [NGB] that the applicant's request be approved. The applicant's severance pay was incorrectly calculated for 10 years of service and he should have received severance pay calculated on 11 years of service per Title 10, USC, Section 1212 (b). The FLARNG concurs with this advisory opinion.

5. On 25 March 2024, the applicant responded to the NGB advisory opinion and stated, he did not have any comments to provide. "Naturally, due to their findings being the same as mine."

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 petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, advisory opinion from the National Guard Bureau, the Board concurred with the advisory finding the applicant served for 10 years, 11 months, and 24 days. His records show he was paid for 10 years of service; however, a year of active service is that of 6 months or more is considered a whole year for pay purposes. Therefore, the Board unanimously granted relief in the recalculation of the applicant's severance pay at 11 years vice 10 years. The Board defers to the Defense Finance and Accounting Service (DFAS) for calculation of payment.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 and Army National Guard records of the individual concerned be corrected by recalculating the applicant's severance pay at 11 years of service. The Board defers to the Defense Finance and Accounting Service (DFAS) for calculation of payment.

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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. DOD 7000.14-R, FMR, Volume 7A, Chapter 35 prescribes the policy for entitlements that members may receive when separating from military service.

a. Section 5.0 (Disability Severance Pay) states, a member separated from the military service for physical disability is entitled to severance pay, if qualified, as prescribed in personnel regulations of the military service concerned. When a member is entitled to disability severance pay, separation orders specify this entitlement.

b. Section 5.3 (Computation) states in subsection 5.3.1. (Formula), to compute disability severance, pay, multiply the sum of the highest applicable basic pay amount (described in subparagraph 5.3.3) for 2 months by the number of combined years (but not over 19) of active service and inactive-duty points.

c. Section 5.3.2. (Years of Service) states, the member's separation orders will specify the total combined years of active service and inactive-duty points to be counted in computing severance pay. Round this total to the nearest whole year, with 6 months or more rounded up. The maximum number of years of service for computing the disability severance pay will be 19 years.

d. Section 5.3.3. (Grade at Which Disability Severance Pay is Computed) states to compute severance pay based on the basic pay of the highest grade or rank in which the member is serving on the date placed on the Temporary Disability Retired List or, if not applicable at separation.

2. Title 10, USC, Section 1212(b), Disability Severance Pay states, a part of a year of active service that is six (6) months, or more is counted as a whole year.

//NOTHING FOLLOWS//