

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 February 2025

DOCKET NUMBER: AR20230012428

APPLICANT REQUESTS: remission of his out-of-service debt.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

FACTS:

1. The applicant states, in effect, the Defense Finance and Accounting Service (DFAS) charged him with a \$4,365.44 debt, but the applicant contends he does not owe this money because the Army retired him on 25 September 2007.
2. A review of the applicant's service records shows the following:
 - a. On 12 September 2000, after completing prior enlisted service in the U.S. Army Reserve and the Regular Army, the applicant enlisted into the South Carolina Army National Guard (SCARNG) for a 6-year term.
 - b. On 28 August 2005, the Army mobilized the applicant and, on 5 November 2005, he deployed to Kuwait/Iraq. On 7 September 2006, he redeployed and, effective 14 September 2006, orders retained him on active duty under the Reserve Component Medical Holdover Medical Retention Processing Program.
 - c. On 16 August 2007, a formal physical evaluation board (PEB) found the applicant unfit for continued military service and recommended his placement on the Temporary Disability Retired List (TDRL) with a combine disability rating of 40 percent. On 25 September 2007, the Army honorably retired the applicant and effective 26 September 2007, placed him on the TDRL.
 - d. On 25 September 2007, the SCARNG honorably discharged the applicant. His National Guard Bureau (NGB) 22 (Report of Separation and Record of Service) indicates he completed 7 year and 14 days of SCARNG service.
 - e. On 14 April 2009, a PEB determined the applicant should be removed from the TDRL and placed on the Permanent Disability Retired List (PDRL). Effective 5 May

2009, U.S. Army Physical Disability Agency Orders removed the applicant from the TDRL and placed him on the PDRL, with a combined disability rating of 40 percent.

3. On 12 March 2024, DFAS provided the following with regard to the applicant's debt:

a. The applicant originally owed \$2,426.58 plus interest/penalties/administrative fees(which totaled \$1,660.13); DFAS subsequently wrote off \$79.95 of the original debt and \$74.15 in interest/penalties/administrative fees. The breakdown of the debt is listed below; in each case, the amounts were paid, but the applicant's unit later reported the applicant had not performed duties for those respective periods:

- 9/26/2007 to 9/30/2007 – \$239.97
- 9/26/2007 to 9/30/2007 – \$438.35
- 10/1/2007 to 10/15/2007 – \$719.89
- 10/1/2007 to 10/15/2007 – \$1,028.37

b. The applicant paid \$3,285.95 towards the debt, bringing the remaining balance to \$646.63; DFAS referred this amount to a collections agency. DFAS noted the collection agency can charge additional fees, so, at this point, the applicant may actually owe more than \$646.63.

4. On 9 August 2024, NGB provided an advisory opinion and recommended disapproval of the applicant's request.

a. "Through no fault of the Soldier, he was overpaid his pay and allowances while he was on active-duty orders before he retired. The Soldier claims that he should not repay the debt because of his retired status at the time of the overpayment. He received pay and allowances for the period of 26 September 2007 to 30 September 2007, and the period of 01 October 2007 to 15 October 2007."

b. "This office recommends denial of the Soldier's request because the debt is not erroneous. The overpayment was a result of clerical error in which the Soldier was overpaid active duty pay and allowances after his retirement date. Although the Soldier was not responsible for the error, he did receive the payments and they must be repaid...."

5. On 15 August 2024, the Army Review Boards Agency sent the applicant a copy of NGB's advisory opinion for his review and the opportunity to submit matters in rebuttal; 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 recommendation outlined in the NGB advisory opinion and the lack of any rebuttal of those findings and recommendation submitted by the applicant, the Board concluded here was insufficient evidence of an error or injustice warranting a change to the applicant's pay record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
 X _____
 CHAIRPERSON

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 37 (Pay and Allowances of the Uniformed Services), U.S. Code, section 1007 (Deductions from Pay) states:

a. An amount that a member of the uniformed services is administratively determined to owe the United States or any of its instrumentalities may be deducted from the member's pay in monthly installments.

b. If the indebtedness of a member of the uniformed services to the United States is due to the overpayment of pay or allowances to the member through no fault of the member, the amount of the overpayment shall be recovered in monthly installments.

c. In all cases, the Secretary concerned shall provide a reasonable opportunity for the member to request a delay in the imposition of the repayment requirement to recover the indebtedness. Before beginning collection efforts, the Secretary concerned shall consider the reasons provided by the member for the requested delay, including the financial ability of the member to repay the indebtedness, and the hardship that immediate collection would impose on the member and the member's dependents.

2. Department of Defense (DOD) 7000.14-R (DOD Financial Management Regulation), Volume 16 (Collection of Debts Owed by Individuals to the DOD), currently in effect, states in paragraph 4.0 (Collection of Debt from Military Retirees and Survivor Benefit Plan Annuitants):

a. A debt may be the result of an overpayment to the military retiree, or an amount owed to the Government but unpaid by a military retiree. The head of the military retiree pay office, Defense Finance and Accounting Service (DFAS) – Retired and Annuitant Pay, must ensure that it affords military retirees all legal rights relative to the indebtedness arising from overpayments of pay and allowances, including due process. This includes providing the military retiree the opportunity to request a delay in collection of the debt.

b. Debt collection offices (DCO) must provide the debtor with written notice of the nature and amount of the adjustment, as well as a point of contact for questions regarding the adjustment. The actual overpayment must have occurred after April 26, 1996, and, unless the retiree has consented to higher amounts in writing, the amount deducted cannot exceed 15 percent of the retiree's disposable income. A military retiree's pay is available for repayment of indebtedness by involuntary offset without the military retiree's consent, provided the military retiree is afforded due process.

//NOTHING FOLLOWS//