

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 July 2024

DOCKET NUMBER: AR20230012452

APPLICANT REQUESTS: remission of remaining debt associated with previously received separation pay over payment.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 April 2015
- DD Form 215 (Correction to DD Form 214 Certificate of Release or Discharge from Active Duty)
- Department of Veterans Affairs (DVA) letter, 21 August 2023

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 pertinent part that upon his release from active duty, he received \$106,938.72 in separation pay disbursed in two installments of \$53,000.00 each. He contests that at the time of receipt his life was completely upended due to his involuntary separation caused by the reduction in forces. Shortly after he was discharged, he was advised that the computation utilized to determine his separation pay was incorrect resulting in his incurrence of a debt for the difference (approximately \$53,000.00). He notes that by the time of the notification, he had spent the majority of the money received. Since then, he has repaid approximately \$15,000.00 of the debt and feels that the remaining amount should be remitted because the mistake was made by the finance department. He is currently rated as 100 percent disabled and receiving compensation accordingly by the DVA. Previous payments were reduced due to the recoupment of his separation pay. However, the remaining overpayment portion is still being recouped.

3. A review of the applicant's service records show:

- a. On 26 May 2007, the applicant was appointed as a Regular Army commissioned Field Artillery Officer.
 - b. On 21 May 2010, the U.S. Army Human Resources Command issued Orders Number 141-127 announcing the applicant's promotion to the rank/grade of captain (CPT)/O-3, effective 1 June 2010.
 - c. On 27 February 2015, the U.S. Army Installation Management Command issued Orders Number 058-0157 reassigning the applicant to the U.S. Army transition point pending separation processing with entitlement to full separation pay.
 - d. On 1 April 2015, the applicant was honorably discharged from the Army in accordance with Army Regulation 600-8-24 (Officer Transfers and Discharges), Chapter 5 (Early Separation) with entitlement to \$106,938.72 in separation pay.
 - e. On 19 May 2015, a DD Form 215 was issued amending the previously issued DD Form 214 to reflect a correction of the applicant's separation pay entitlement from "\$106,938.72" to now reflect "\$70,019.40." item 12d. (Total Prior Active Service) was amended to reflect "1 year, 4 months, and 16 days" and item 12e (Total Prior Inactive Service) amended to reflect "2 years and 6 days."
4. The applicant provides a DVA letter reflective of the applicant's disability rating (100 percent) and monthly compensation of \$3,621.95 effective 1 December 2022.
 5. On 22 April 2024, the Department of the Army, Office of the Deputy Chief of Staff, G-1, Program Analyst, Compensation and Entitlements Division, provided an advisory opinion recommending disapproval of the applicant's request noting that the debt is the result of duplicate payments issued on 13 and 14 May 2015. On 13 May 2015 payment was made by electronic funds transfer. On the following day (14 May 2015), a check was issued by the U.S. Treasury and negotiated. There is no evidence that this overpayment was returned to the Defense Finance and Accounting Service to warrant changing the applicant's record.
 6. On 23 April 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 23 July 2024, the applicant has not responded.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 available military records, the Board found the applicant was discharged for early separation on 1 April 2015 and in connection with his discharge, received separation pay in the amount of \$70,019.40. Unfortunately, the applicant received a duplicate payment of his separation pay in the amount which resulted in a collection of that duplicate payment. The Board reviewed and concurred with the Office of the Deputy Chief of Staff G-1 analyst with the compensation and entitlements division recommending disapproval of the debt relief request based on the applicant receiving a duplicate payment of his separation pay. Based on this the Board determined relief was not warranted and denied relief.

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, 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) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.
3. Title 10, USC, section 1174 (Separation Pay Upon Involuntary Discharge or Release from Active Duty) provides that a regular commissioned officer of the Army who is discharged and who has completed six or more, but less than twenty years of active service immediately before that discharge or separation is entitled to separation pay computed based on 10 percent of the years of active service and 12 times the monthly basic pay to which the service member is entitled at the time of discharge.

//NOTHING FOLLOWS//