

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 July 2024

DOCKET NUMBER: AR20230012767

APPLICANT REQUESTS: cancelation/remission of debts associated with overpayment of Basic Allowance for Housing (BAH) and negative leave balance at the time of discharge.

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

FACTS:

1. The applicant states, in pertinent part, he was overpaid BAH while on active duty and upon discharge he was charged for negative leave balance.
2. A review of the applicant's available service record reflects the following:
  - a. On 25 April 2017, he enlisted in the Regular Army.
  - b. DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters (BAQ) and/or Variable Housing Allowance (VHA)), dated 8 March 2018 reflects he requested BAH at the "with dependents" rate for his spouse and child for the duty location Fort Carson, CO, indicating he was married on 18 July 2015 and had a dependent son who resided in Colorado Springs.
  - c. On 17 November 2022, the Installation Management Command, Headquarters, United States Army Garrison, Fort Carson, issued Orders Number 321-0018 reassigning him to the U.S. Army transition point for transition processing and honorable release from active duty, effective 24 April 2023.
  - d. DD Form 214 (Certificate of Release or Discharge from Active Duty), ending 24 April 2023 reflects an honorable release from active duty for completion of required active service and transfer to the U.S. Army Reserve Control Group (Reinforcement). Item 12 (Record of Service) shows service from 25 April 2017 to 24 April 2023 for a net active service this period of 6 years.

e. His record is void of any court documents pertaining to a divorce and/or child custody.

3. On 20 February 2024, in the processing of this case, the Office of the Deputy Chief of Staff, G-1, Financial Management Specialist, Military Pay Branch, provided an advisory opinion recommending disapproval of the applicant's request stating, in effect:

a. The applicant does not submit any supporting documentation that warrants a correction to the housing allowance and leave accounts.

b. His divorce decree shows he is not awarded legal and physical custody of his dependent child. There is no evidence that monthly child support was paid per the divorce decree. Department of Defense policy does not authorize the applicant to receive a housing allowance at the "with dependent" rate since he is not the custodial parent or did not pay monthly child support payments in at least the BAH-Difference amount for his grade. Since he was assigned to the barracks, the BAH at the "with dependent rate" was collected and he was paid a BAH-Partial rate.

c. The applicant's leave record indicates he had a leave balance of 21 days at the start of fiscal year 2023, earning 16.5 more days of leave from 1 October 2022 through 24 April 2023. He took a total of 46 days of leave; five days of leave from 1 October 2022 to 5 October 2022; eight days of leave taken from 11 February 2023 to 18 February 2023; and 33 days of leave from 23 March 2023 to 24 April 2023. His final leave balance is 10 days of excess leave.

4. On 1 March 2024, the applicant was provided with a copy of the advisory opinion to provide a response. As of 16 March 2024, he did not respond.

#### BOARD DISCUSSION:

1. 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and Deputy Chief of Staff- G-1, Military Pay Branch advisory opinion, the Board concurred with the advising official finding failed to provide supporting documentation that warrants correction to the applicant's housing allowance and leave accounts.

2. The Board determined the applicant's record is absent sufficient evidence within his divorce decree that shows he was awarded legal and or physical custody of his dependent sone. Furthermore, the Board noted there was no mention within the

applicant's divorce decree of a monthly child support stipend. Based on the opine which noted the applicant is not authorized to receive housing allowance at the with dependents rate due to divorce and not being the custodial parent. The Board agreed, the applicant's contentions for cancelation/remission of his debts associated with overpayment of Basic Allowance for Housing (BAH) and negative leave balance at the time of discharge is without merit. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

■

---

■ ■

---

■

■

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. Department of Defense Financial Management Regulation, Volume 7A, Chapter 26 (Basic Allowance for Housing (BAH) provides that effective 1 January 1998, in general,

BAH provides members a monthly allowance for housing. This allowance is authorized for members with and without dependents. Basic Allowance for Housing is intended to pay only a portion of housing costs. Basic Allowance for Housing will consist of BAH, BAH-II, BAH Difference (BAH-DIFF), Partial BAH, Overseas Housing Allowance (OHA), and Family Separation Housing (FSH). Basic Allowance for Housing also consists of the former allowances known as Basic Allowance for Quarters (BAQ) and Variable Housing Allowance (VHA).

2. Army Regulation (AR) 637-1 (Army Compensation and Entitlements Policy) states:

a. Chapter 7-2 (General Provisions) A Soldier is authorized a housing allowance for a child for whom the Soldier is paying child support if all the following conditions are met:

- The Soldier is required to support a child in the custody of a former spouse
- He or she is married to another Soldier with children born of this marriage
- The Soldier lives in family-type government quarters with the Soldier's spouse and children
- The Soldier is assigned to PCS to a different Permanent Duty Station outside commuting distance
- The Soldier's current spouse, who is also a Soldier, and children remain in government quarters
- The government quarters assignment is in or transferred to the remaining Soldier's name

(1) Single Soldiers requesting basic allowance for housing differential. Single Soldiers who are requesting to receive BAH – DIFF and/or BAH/OHA at the with dependent rate based on a dependent child are required to be the custodial parent by having legal and physical custody or by paying monthly child support to the custodial parent in at least the BAH – DIFF amount for the Soldier's grade. For housing allowance purposes, legal custody is defined as having a court order awarding the Soldier the custodial parent. Physical custody is defined as the child living in the same residence as the Soldier on a nontemporary basis for a period of at least 90 consecutive days.

(2) Proof of parentage. Soldiers are required to be identified on the birth certificate. A properly certified DNA test or court declaration establishing proof of parentage are also acceptable if no birth certificate is available.

(3) When paying monthly child support, a cancelled check, money order, Electronic Fund Transfer (EFT), voluntary allotment, and involuntary allotment are acceptable as proof of support. EFT payments made via bank account deduction or PayPal account is also acceptable. However, all transactions must be payable to the custodial parent monthly. The amount of support must be in an amount that is at least

the current BAH – DIFF based on the Soldier's grade. In child support payment cases, a joint bank account or letter signed by the custodial parent attesting to support payments are not acceptable as proof of support.

b. Basic allowance for housing differential Soldiers who do not have court decreed primary legal and physical custody of their children generally receive BAH – DIFF, which is the difference between with and without dependent nonlocality BAH rate in a given calendar year. A Soldier who is paying child support and residing in single-type government housing is authorized BAH – DIFF, providing the amount of child support is greater than or equal to the BAH – DIFF amount for the Soldier's pay grade. A Soldier must be able to demonstrate that they contribute no less than the applicable BAH – DIFF rate to retain the allowance, but it is not required for a legal document to state support or responsibility to support in order to be eligible for BAH – DIFF.

3. AR 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

//NOTHING FOLLOWS//