

IN THE CASE OF: ██████████

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230013600

APPLICANT REQUESTS: in effect,

- remission or cancellation of indebtedness for recoupment of separation pay in the amount of \$102,635.48
- a personal appearance before the Board

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)
- Letter from Major General (MG) ██████████ to the Awards Review Board
- Email with Lieutenant Colonel (LTC) ██████████
- ██████████ Credit Unit Checking Statement
- Department of Veterans Affairs (VA) letter, 12 May 2016
- ██████████ Credit Union Savings Statement
- VA letter, 12 October 2016
- VA letter, 1 November 2016
- Narrative Summary of Disabilities
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings
- U.S. Army Physical Disability Board (USAPDA) Memorandum, Subject: Permanent Physical Disability Retirement
- USAPDA Orders Number D 334-18
- USAPDA Orders Number D364-22
- Income Tax Documents
- VA letter, 6 February 2017
- DD Form 2789 (Waiver/Remission of Indebtedness Application)
- Email with ██████████ Army National Guard (██████████ ARNG) financial specialist
- Leave and Earnings Statements (LES) for period of 22 March 2017
- Department of the Treasury Internal Revenue Service (IRS)
- Defense Finance and Accounting Service (DFAS) account statement of indebtedness
- Letter from MG ██████████ to the Awards Review Board
- Department of the Treasury Bureau of the Fiscal Service letter of indebtedness

- Biographical Summary
- Email from medical provider
- ■■■ Health letter
- Trauma Life Consulting letter
- VA letter, 15 February 2024
- Statement from ■■■
- DFAS template for disability severance pay
- Pain Clinic progress notes
- Retired Pay inquiry
- Self-authored statement
- Statement from ■■■
- Statement from ■■■
- Unauthored statement
- VA medical records

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 effect, he was on long term active duty orders for operational support when he was told five-days before the end date of his orders he would not be continued on active duty due to budget constraints. Then in April and May of 2016, separation pay in the amount of \$74,880.00 before taxes was deposited into his bank account. He was entitled to receive this pay because he was involuntarily separated. His mental health began to deteriorate in June 2015, and he believes this is the reason he was not continued on active duty which entitles him to retain the separation pay now that he is receiving his VA disability. Under the St. Claire Decision he is not required to repay the separation pay due to his combat related disabilities. When he told this to his ARNG unit, he was told that he needed to contact the IRS to have the indebtedness adjusted. He contacted the IRS; however, they continue to charge interest and fees on his indebtedness. He has submitted a request for waiver or remission of his indebtedness. He has never received a response as to whether his request was approved or disapproved. He should retain the separation pay due to his service connected mental health issues from his deployments. He requests the remission or cancellation of his separation pay indebtedness due to no fault of his own as he did not know it was an over payment and he would be required to repay it once he began receiving his VA disability or his retirement pay.

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

- a. With prior enlisted ARNG service, on 21 August 2004, the applicant executed his oath of office and was appointed as a Reserve commissioned officer. He was subsequently appointed in the ARNG and was extended temporary Federal recognition.
- b. On 27 September 2004, Special Orders Number 234, issued by the National Guard Bureau (NGB), the applicant was appointed in the ARNG and extended Federal recognition, effective 21 August 2004.
- c. On 7 October 2004, the applicant was honorably discharged from the ARNG. NGB Form 22 (Report of Separation and Record of Service) shows the applicant completed 1-month and 16-days of service.
- d. On 8 October 2004, the applicant enlisted in the ARNG.
- e. On 14 October 2004, Orders Number 289-708, issued by the Department of Military Affairs Office of the Adjutant General, honorably discharged the applicant from the ARNG, effective 7 October 2004.
- f. On 21 October 2004, Orders Number 295-033, issued by the Department of Military Affairs Office of the Adjutant General, ordered the applicant to active duty in support of Operation Iraqi Freedom, effective 21 October 2004.
- g. On 16 January 2006, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1-year, 2-months, and 26-days of active service.
- h. On 17 March 2006, the applicant was honorably discharged from the ARNG for an appointment as a commissioned officer. NGB Form 22 shows the applicant completed 1-year, 5-months, and 10-days of service.
- i. On 18 March 2006, the applicant executed his oath of office and was appointed as a Reserve commissioned officer in the rank/grade of second lieutenant (2LT)/O-1. He was subsequently appointed in the ARNG in the rank of 2LT and was extended temporary Federal recognition.
- j. On 3 April 2006, Orders Number 093-3, issued by the NGB, the applicant was honorably discharged from the ARNG, effective 7 October 2004 [sic].
- k. On 3 April 2006, Special Orders Number 87, issued by the NGB, the applicant's Federal recognition was withdrawn, effective 7 October 2004.
- l. On 25 May 2006, Special Orders Number 136, issued by the NGB, the applicant was appointed in the ARNG, effective 18 March 2006.

m. On 18 March 2009, Orders Number 073-102, issued by the Department of Military Affairs Office of the Adjutant General, the applicant was ordered to active duty in support of Operation Iraqi Freedom, effective 13 May 2009.

n. The applicant's DD Form 214 shows he was ordered to active duty effective 23 September 2007. He was honorably released from active duty on 31 March 2009. DD Form 214 shows the applicant completed 1-year, 6-months, and 8-days of active service.

o. On 8 July 2010, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1-year, 1-month, and 26-days of active service.

p. On 19 July 2010, Orders Number 156-053, issued by the Department of Military Affairs Office of the Adjutant General, the applicant was ordered to Active Duty for Operation Support – Reserve Component (ADOS-RC), effective 9 July 2010.

q. On 6 October 2010, Orders Number 223-044, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to ADOS – RC, effective 1 October 2010.

r. On 3 October 2011, Orders Number 222-003, issued by the ■■■ ANRG Office of the Adjutant General, the applicant was ordered to ADOS – RC, effective 16 October 2011.

s. On 26 September 2012, Orders Number 198-164, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to Full Time National Guard Duty – Operational Support (FTNGD – OS), effective 1 October 2012.

t. On 5 November 2012, Orders Number 310-007, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to Active Duty for Training (ADT), effective 15 November 2012.

u. On 24 January 2013, Orders Number 024-034, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to ADT, effective 17 February 2013.

v. On 1 February 2013, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 2-years, 6-months, and 23-days of active service.

w. On 30 September 2013, the applicant was honorably released from active duty. DD Form 214 shows he completed 7-months and 14-days of active service. The applicant's DD Form 214 for this period of service was not published until 16 March 2015.

- x. On 23 October 2013, Orders Number 296-037, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to FTNGD-OS, effective 1 November 2013.
- y. On 12 May 2014, Orders Number 132-145, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to FTNGD-OS, effective 7 June 2014.
- z. On 27 May 2014, the applicant was honorably released from active duty after completion of 6-months and 27-days of active service.
- aa. On 29 September 2014, Orders Number 272-093, issued by the ■■■ ANRG Office of the Adjutant General, the applicant was ordered to FTNGD-OS, effective 1 October 2014.
- bb. On 5 June 2015, the applicant was honorably released from active duty after completion of 8-months and 5-days of active service.
- cc. On 9 June 2015, Orders Number 160-005, issued by the ■■■ ARNG Office of the Adjutant General, the applicant was ordered to FTNGD-OS, effective 21 June 2015.
- dd. On 30 September 2015, the applicant was honorably released from active duty after completion of 3-months and 10-days of active service.
- ee. On 3 February 2016, the applicant's DD Form 214 for service ending 30 September 2013 was corrected to reflect he was authorized separation pay in the amount of \$74,880.00.
- ff. On 22 March 2016, the applicant's DD Form 214 for service ending 30 September 2013 was corrected to reflect his separation code was change to LBK.
- gg. On 11 August 2016, Orders Number HR-6224-00004, issued by the U.S. Army Human Resources Command, the applicant was ordered to active duty, effective 22 August 2016 to participate in Reserve component managed care evaluation disability evaluation system related medical appointments.
- hh. On 9 November 2016, the informal PEB found the applicant physically unfit for retention and recommended he be placed on the Permanent Disability Retired List (PDRL) with a 70 percent disability rating due to his generalized anxiety disorder and major depressive disorder.
- ii. On 29 November 2016, Orders Number D 334-18, issued by USAPDA, the applicant was placed on the PDRL, effective 3 January 2017, with 70 percent disability.

jj. On 28 December 2016, Orders Number 363-1002, issued by the Joint Force Headquarters [REDACTED] ARNG, the applicant was honorably released from the ARNG and assigned to the U.S. Army Reserve (USAR) Control Group (Retired Reserve), effective 2 January 2017 for placement on the PDRL.

kk. On 2 January 2017, the applicant was honorably released from the ARNG and assigned to the USAR Control Group (Retired Reserve). NGB Form 22 shows the applicant completed 10-years, 9-months, and 15-days of service.

ll. On 4 January 2017, Special Orders Number 1, issued by the NGB, the applicant's Federal recognition was withdrawn, effective 2 January 2017, for transfer to the USAR Retired Reserve.

4. The applicant provides:

a. MG [REDACTED] letter to the Award Review Board which has no bearing on the case as it is regarding the upgrading of an award during the applicant's enlisted service.

b. Emails between the applicant and LTC [REDACTED] where the applicant inquired about his separation pay and the reason, he was the only person not extended on orders.

c. UW Credit Union checking account statement dated 30 April 2016 which shows the applicant received funds from DFAS on:

- 15 April 2016 in the amount of \$6,850.01
- 15 April 2016 in the amount of \$220.65
- 20 April 2016 in the amount of \$6,850.01
- 20 April 2016 in the amount of \$33.76

d. VA letter dated 12 May 2016 which stated the applicant began his treatment at the VA hospital in [REDACTED] in October 2015 when he began having thoughts of suicide. In November 2015, he attempted suicide using a handgun. He sought treatment with a psychiatrist for medication management. He was diagnosed with alcohol use disorder which was in early remission, anxiety disorder and depression.

e. [REDACTED] Credit Union Savings Account statement which shows the applicant received funds from DFAS on:

- 22 April 2016 in the amount of \$6,850.01
- 27 April 2016 in the amount of \$6,850.01
- 29 April 2016 in the amount of \$6,850.01
- 4 May 2016 in the amount of \$6,850.01
- 6 May 2016 in the amount of \$6,850.01

- 11 May 2016 in the amount of \$3,342.86
- 25 May 2016 in the amount of \$493.88

f. VA letter dated 12 October 2016 which stated the applicant was entitled to VA benefits that were adjusted on 1 July and 1 August 2016. He was receiving compensation as an individual who was unemployable because he was unable to secure or follow a substantially gainful occupations as a result of his service connected disabilities for generalized anxiety disorder with alcohol use disorder and major depressive disorder.

g. VA letter dated 1 November 2016 which stated the applicant's current benefit payment would continue as unchanged.

h. The Narrative Summary from his PEB shows the applicant received a line of duty approval for generalized anxiety disorder and major depressive disorder with an onset of 14 December 2005 which it appeared he did not meet retention standards. The applicant's conditions had deteriorated over time. His commander did not recommend retention as he suffers from anxiety disorder as well as major depression disorder. He had problems working around Soldiers and service members in uniform. He struggles with group situations and had been unable to maintain employment and made three suicide attempts in the past 12-months.

i. On 29 November 2016, the USAPDA notified the applicant of the findings of the PEB where he was found to be physically unfit for retention and would be permanently retired with a disability rating of 70 percent.

j. Applicant's 2016 income tax documents showing a total compensation in the amount of \$81,409.85.

k. VA letter dated 6 February 2017 which informed the applicant of his 80 percent combined service connected disability to be effective 1 December 2016. He was paid at 100 percent rate because he is unemployable due to his service connected disabilities.

l. On 10 March 2017, the applicant requested a waiver for his \$74,880.00 indebtedness. He kept the pay as he thought he earned it and repaying the debt would be a financial hardship.

m. Email between the applicant and Mr. [REDACTED] which stated the applicant cannot obtain loans because he is in debt for \$78,000.00 to the VA and \$78,000.00 to the Department of Defense (DoD). The applicant was informed that if the DoD was collecting the separation pay, then the VA should not be collecting it. To know for sure if the VA is collecting money, it should be stated on his VA disability award letters. He was

advised he could submit a request for a waiver. If approved it would not guarantee the interest and fees would be waived.

n. LES dated 22 March 2017 which shows the applicant received a lump sum separation pay in the amount of \$74,880.00. The collection for the erroneous payment of separation pay was on 1 January 2017 which was suspended and the applicant was to contact his servicing finance office.

o. IRS letter dated 12 March 2018 which shows the applicant owes an additional \$12,863.00 in additional taxes, payment adjustments and interest.

p. DFAS indebtedness statement dated 17 June 2019 shows the applicant owes \$79,450.82. The remarks block states the applicant's waiver was forwarded to the appropriate action office. In the meantime, he was to continue to make payments as interest, administrative costs, and penalties will accrue.

q. MG [REDACTED] letter dated 29 June 2020 to the Awards Review Board has no bearing on the case as it is regarding the upgrading of an award during the applicant enlisted service.

r. Department of the Treasury Bureau of the Fiscal Service dated 17 May 2023 stated that DFAS referred the applicant's unpaid debt to the U.S. Department of the Treasury for immediate collection. The applicant owes the U. S Government \$102,635.48.

s. The applicant's biographical summary has no bearing on the case.

t. E-mail between the applicant and his medical provider which shows the applicant inquired if his hearing loss could have been caused from firing military weapons. The medical provider advised that it was possible, and he could contact a Veterans Service Organization for assistance with the disability claim.

u. [REDACTED] Health letter dated 16 January 2024 which stated the applicant was diagnosed with moderate to moderately severe neurosensory hearing loss in his left ear which is permanent and cannot be treated other than the use of hearing amplification with hearing aids. He had a history of military service firing military weapons.

v. Trauma Life Consulting letter dated 19 January 2024 which stated the applicant had been seen for the past several years on a weekly basis for severe complex Post-Traumatic Stress Disorder (PTSD) and alcoholism. The applicant reported he has used alcohol to numb and try to cope with sensations he is having which he could not tolerate without the alcohol. He had reported stressors from his combat experience. He had found it difficult to find someone to speak with who has similar experiences which

causes isolation. At this time, he has been sober for 5-years and had attempted suicide during sobriety.

w. VA letter dated 15 February 2024, stated the applicant has service connected anxiety and is under care at the VA hospital for treatment of depression, PTSD and alcohol use disorder in remission.

x. Letter from [REDACTED] dated 12 March 2024 which stated in pertinent part, he worked with the applicant in the G3 Pre-mobilization of Training and Evaluation, he was on ADOS orders which were renewed annually. About March or April 2015, the applicant's performance began to decline. He began to report to work late. His mental health issues began to overlap into his work performance. The applicant was initially told he would be extended on active duty orders to take over the program after the manager retired. On 25 September 2015, the applicant was notified his orders would not be extended due to budget constraints 5-days before the end date of his current order.

y. DFAS template for St. Clair Decision Taxability of Disability Severance Pay used to inform service members who have been transferred to the Temporary Disability Retired List and who otherwise were not eligible for retirement and whose final disability rating is less than 30 percent may be discharged with disability severance pay.

z. Two pages of Pain clinic progress notes for the Board's review

aa. Retired pay inquiry where the applicant asks how the government can collect back \$75,000.00 in monies when the service member only received 50,000.00 after taxes. DFAS responded his situation falls under St. Clair Decision, he would have to contact the IRS for the adjustment.

bb. Self-authored statement which stated the applicant received \$74,880.00 in severance pay but received \$51,292.93 after taxes. He was told by military pay personnel who told him his situation falls under St. Clair Decision and he needed to contact the IRS. He did not receive a response back. His wife lost her job as of 1 October so he needs the money.

cc. Letter from [REDACTED] who stated when the applicant returned from a deployment in 2005, he changed. He was easily irritated and impatient over trivial things. He had become abusive and disrespectful to the family. He would use alcohol to go to sleep. When he lost his job and his marriage fell apart, he began drinking more. He fell into a deep and self-destructive depression with anxiety.

dd. Letter from [REDACTED] who stated that after the birth of their second child the applicant stopped seeing life in a positive way and only seeing the negative. He began

having trouble sleeping, then he turned to alcohol to solve his problems. As his anxiety worsened, he closed himself off from his family.

ee. Unauthored statement which stated on 20 May 2015 the U.S. Property and Fiscal Office (USPFO) initiated separation payment on the applicant based on his active duty for training orders though there was no indication the applicant requested the pay. It was previously determined he was not eligible to receive the separation pay because he was on active duty for training orders. During the period of 15 April through 11 May 2016, the applicant received \$74,880.00 in separation pay due to no fault of his own which now has cause his indebtedness. When a service member receives separation pay and later receives retired pay or VA compensation based on the same period of service for which the separation pay is paid, Federal law requires the recoupment of the separation pay. The applicant began receiving VA benefits in 2016 and was placed on the disability retired list in January 2017. The system shows the applicant received an erroneous payment which neither DFAS nor the VA should recoup as the debt is being collected through the Defense Debt Management System.

ff. Eleven pages of VA medical records for the Board's review.

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 showing the applicant received severance pay and later retired, and severance pay not being authorized to those retired for medical conditions, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the debt being collected from the applicant.

BOARD VOTE:

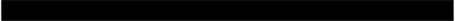
<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

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.

1/7/2025

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 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. Department of Defense Instruction 1332.29 (Involuntary Separation Pay (Non-Disability)), in effect at the time, establishes policy, assigns responsibilities, and prescribes procedures concerning eligibility and requirements for receipt of separation pay for Active and Reserve Component Service members who are involuntarily separated from active duty or active service (AD/AS) in accordance with Title 10 USC, section 1174. Involuntary Separation Pay (ISP) is authorized for Service members who are involuntarily separated from AD/AS and who meet the eligibility requirements of this issuance. A Service member who receives ISP and later qualifies for retired pay, retainer pay, or disability compensation will have their retired pay, retainer pay, or disability compensation reduced until the total amount deducted is equal to the total amount of ISP received. Waivers are not authorized under this provision. Paragraph 3.6 (Repayment of Separation Pay Severance Pay or Readjustment Pay), service members who receive separation pay under this Instruction, or severance pay or readjustment pay under any provision of law based on service in the Armed Forces, and who subsequently qualify for retired or retainer pay shall have deducted an amount equal to the total amount of separation pay, severance pay, and readjustment pay. This amount will be recouped from each payment of this retired or retainer pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received. Service members who receive separation pay or severance pay or readjustment pay under any law based on active military service and become

eligible for disability compensation administered by the Department of Veterans Affairs shall have deducted from such disability compensation an amount equal to the total amount of separation pay, severance pay, or readjustment pay received. However, such reduction shall not apply to disability compensation in which the entitlement to that disability compensation is based on a later period of AD than the period of AD for which the separation pay, severance pay, or readjustment pay was received.

3. Department of Defense Financial Management Regulation 7000.14-R, Volume 7a, chapter 35 (Separation Payments), 3.0 (Separation Pay) (Non-Disability), entitlement Full payment of non-disability separation pay is authorized to Service members of the Regular and Reserve Components who have been involuntarily separated from active duty and have met each of the following four conditions:

- member is on active duty or full-time National Guard duty and has completed at least 6-years, but less than 20-years, of active service; Reserve members not on the active-duty list when separated must have 6-years of continuous active duty or full-time National Guard duty immediately preceding separation, period of active duty is considered continuous if any break in active service does not exceed 30-days.
- member's separation must be characterized as "honorable"
- member is being separated involuntarily, through either the denial of reenlistment or the denial of continuation on active duty or full-time National Guard duty
- member must have entered into a written agreement with the military service concerned to serve in the Ready Reserve in a Reserve Component of the Armed Forces for a minimum period of 3-years following the separation from active duty

Recoupment of Separation Pay From Retired Pay, Retainer Pay, or Department of Veterans Affairs (VA) Disability Compensation Service members who receive separation pay under any provisions of law based on service in the Armed Forces, and, subsequently, either qualify for retired or retainer pay or become eligible for disability compensation administered by the VA, are subject to the recoupment of the gross taxable separation pay they received. Recoupment from retired pay, retainer pay, or VA disability compensation will be completed as follows: If the Service member receives either retired or retainer pay, then recoupment will be accomplished through monthly deductions from each payment of retired or retainer pay payable to the retired member until the total amount of the deductions equals the gross taxable amount of separation pay received by the member. If the Service member receives VA disability compensation, then recoupment will be accomplished through a deduction from the VA disability compensation payable to the retired member in an amount that is equal to the gross taxable amount of separation pay made after 30 September 1996. The amount to be deducted from the VA disability compensation will be equal to the gross taxable amount of such separation pay, less the amount of federal income tax withheld from such pay at the flat withholding rate for supplemental payments. This reduction,

however, will not apply to disability compensation for which the entitlement to that disability compensation is based on a later period of active duty than the period of active duty for which the separation pay was received.

4. Army Regulation (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.

5. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//