

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230013926

APPLICANT REQUESTS: remission of remaining service debt in the amount of \$219.76.

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

- DD Form 149 (Application for Correction of Military Record)
- Payment History

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 he has provided repayment of his service debt in full through a recoupment action initiated by the Department of Veteran's Affairs (DVA). He notes that the provided documents reflect monthly deductions accordingly.

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

a. On 8 October 1997, the applicant enlisted in the Army National Guard (ARNG) for 8-years.

b. On 7 October 2003, the applicant was honorably released from the ARNG and transferred into the U.S. Army Reserve Control Group (Individual Ready Reserve).

c. On 10 February 2004, the applicant enlisted in the ARNG.

d. On 30 June 2018, the applicant was honorably released from the ARNG and transferred into the Retired Reserve.

e. On 7 November 2018, the GAARNG issued Orders Number 311-242, retroactively transferring the applicant into the Retired Reserve, effective 30 June 2018.

4. The applicant provides Payment History reflective of monthly deductions made from his Department of Veterans Affairs Compensation and Pension entitlements between December 2016 and October 2018 due to previously received drill pay. During this period, the monthly deductions varied from \$49.42 - \$1,646.00 per month.

5. On 25 July 2024, the Defense Finance and Accounting Services provided information pertaining to the applicant's debt. The applicant incurred a debt due to his receipt of military pay and entitlements from 1 October 2016 – 30 September 2017, while also in receipt of DVA compensation. Originally, the applicant had a \$7,257.17 plus \$985.68 in interest, penalties and administrative fees. To date, \$7,425.52 has been collected towards the debt with \$538.75 of the debt and \$58.82 of penalties, interest and administrative fees being written off, resulting in a remaining balance of \$219.76 which has been referred to a collection agency.

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 incurred a debt for concurrent receipt of military pay and entitlements and Department of Veterans Affairs compensation. By regulation, an individual may elect to receive the disability compensation or pension to which the member is entitled because of the member's earlier military service or if the Reserve Component member specifically waives those payments, the pay and allowances authorized by law for the duty that the member is performing, but not both. Unfortunately, the applicant received both, which resulted in debt. The Defense Finance and Accounting Service has verified the debt. Based on the applicant receiving dual entitlements, the Board determined relief was not warranted.

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. Department of Defense Financial Management Regulation 7000.14-R, Chapter 57 (Reserve Entitlements for Active Duty), Paragraph 2.4 (Waiver of Benefits) provides that a Reserve Component (RC) member who is drawing disability compensation or pension from the U.S. for prior military service, and who performs duty for which the member is entitled to pay, may elect to receive either:

- the disability compensation or pension to which the member is entitled because of the member's earlier military service; or –
- if the RC member specifically waives those payments, the pay and allowances authorized by law for the duty that the member is performing

A member who receives military pay and allowances loses entitlement to Department of Veterans Affairs (VA) disability compensation or VA pension payments for the corresponding number of days of Active Duty or number of inactive duty periods performed. Thus, receipt of military pay for two inactive duty periods performed in one calendar day results in the loss of VA disability compensation or VA pension benefits for two calendar days.

3. Army Regulation 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.

//NOTHING FOLLOWS//