

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 August 2024

DOCKET NUMBER: AR20230014976

APPLICANT REQUESTS: remission of debt that resulted from overpayment of drill pay during Battle Assemblies that he did not perform.

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

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 the Defense Finance Accounting Service (DFAS) recouped funds alleging that the funds were not properly disbursed. He contests that funds were withheld from his Social Security Disability entitlement despite being properly earned at the time. The applicant further provides that he was involved in an accident that shattered both of his ankles. However, his commander ordered him to continue to attend Battle Assemblies (BA) until his discharge order was processed; initiated in September 2012. The applicant continued to attend BA until February 2013 and argues that the overpayment judgement was made in error.
3. A review of the applicant's available service records reflects the following:
  - a. After serving in the Regular Army and U.S. Army Reserve, on 31 May 2007, the applicant enlisted in the Army National Guard (ARNG) for 6 years.
  - b. On 12 March 2013, the [REDACTED] ARNG issued Orders Number 071-039 retroactively discharging the applicant from the ARNG effective 27 September 2012 in accordance with National Guard Regulation 600-200 (Enlisted Personnel Management), Paragraph 6-35I (8) (Medically Unfit for Retention).

c. NGB Form 22 (National Guard Report of Separation and Record of Service), item 8b (Effective Date), reflects "27 September 2012"; item 23 (Authority and Reason) reflects "Paragraph 6-35I (8), NGR 600-200 Medically Unfit for Retention."

4. On 5 April 2024, DFAS provided that the applicant's debt was related to payment for the period of 1 October 2012 – 4 January 2013. Originally, the overpayment debt was \$631.50 plus interest/penalties/administrative fees of \$151.33. \$89.06 of interest/penalties/administrative fees were written off. The applicant has paid \$718.97 towards the debt resulting from the previous overpayment and is due \$25.20 that was overpaid. There is currently no remaining debt.

#### 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 and available military records, the Board determined the applicant's contentions for remission of debt related to overpayment of drill pay is not warranted. The Board found the applicant was retroactively discharged from the Army National Guard (ARNG) effective 27 September 2012), for being medically unfit for retention. The discharge date is corroborated by item 8b of the NGB Form 22 and the reason cited in item 23.

2. The Board agreed, despite his retroactive discharge, the applicant received drill pay for battle assemblies covering the period of 1 October 2012 through 4 January 2013, during which time the applicant did not perform duty. Evidence shows on 5 April 2024, the Defense Finance and Accounting Service (DFAS) confirmed that the resulting debt originated from this overpayment, totaling \$631.50 plus \$151.33 in interest, penalties, and administrative fees. DFAS noted that \$89.06 of these fees were written off, and the applicant paid \$718.97, with a remaining overpayment of \$25.20 owed to the applicant. Based on evidence provided by DFAS, there is no outstanding debt.

3. Furthermore, the Board determined that the overpayment resulted from entitlement to pay that the applicant was not authorized to receive post-discharge. There is no indication of administrative error or undue hardship meriting remission under applicable regulations. As such, the Board determined that the applicant's request for debt remission lacks legal and factual merit and 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.

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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, U.S. Code, 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. 37 U.S. Code Section 373 (Repayment of Unearned Portion of Bonus, Incentive Pay, or Similar Benefit, and Termination of Remaining Payments, when Conditions of Payment not met) provides a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the member fails to satisfy such service or eligibility requirement

4. Army Regulation 600-8-105 (Military Orders) prescribes the policies and mandated operating tasks for the orders program of the Military Personnel (MILPER) System. It establishes standards and provides an operational document in a logical sequence.

a. Paragraph 2-16 (Effective Date) provides that the effective date of an order is the date of the order unless one of the conditions listed in (1) through (9) below applies:

(1) The order specifies a later date

(2) The order confirms orders previously issued verbally

(3) The order promotes Reserve Officers not on active duty (Reserve Officer Personnel Act of 1954); These orders may be effective before, on, or after the date of the order

(4) The order retroactively promotes a Soldier per AR 600-8-19, chapter 3

(5) The order announces retroactively (10 USC 1221) the permanent retirement of a soldier because of a physical disability on the date when the 5-year tenure period on the Temporary Disability Retired List (TDRL) expired

(6) HQDA directs a specific date for a MOS award or withdrawal Action

(7) The order retroactively adjusts entitlement for enlistment pay grade for personnel without prior service (AR 601-210, table 2-3)

(8) The order announces an award of a decoration or Good Conduct Medal

(9) The order is being remade to file in the Military Personnel Records Jacket

b. Paragraph 2-19 (Distribution) provides that Commanders issuing orders will establish strict controls to ensure that Orders are sent promptly to each individual and organization named in the order with sufficient lead time to execute the order.

//NOTHING FOLLOWS//