

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 October 2024

DOCKET NUMBER: AR20240001081

APPLICANT REQUESTS:

- remission or cancellation of indebtedness for Basic Allowance for Housing (BAH) in the amount of \$16,838.93
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Memorandum – Subject: Basic Housing Allowance Inquiry, 25 May 2021
- Memorandum – Subject: Report of Investigation- Initial Final, 30 January 2023
- Email communication
- Memorandum – Subject: Remission or Cancellation of Indebtedness, 11 August 2023
- Memorandum – Subject: Notice of Indebtedness, 13 December 2022
- Memorandum – Subject: Notice of Indebtedness, 7 December 2022
- Email communication
- DA Form 4187 (Personnel Action), 7 December 2022
- DA Form 2142 (Pay Inquiry), 7 December 2022
- Memorandum – Subject: BAH, 25 March 2022
- Email communication
- DA Form 5960 (BAH Authorization and Dependency Declaration), 25 March 2022
- Email communication
- Orders Number 357-182, 22 December 2020
- Orders Number 140-183, 20 May 2021
- DA Form 5960, 25 May 2021
- DA Form 2142, 25 May 2021
- Spreadsheet
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 1 September 2023

FACTS:

1. The applicant states she was overpaid BAH and Cost of Living Allowance (COLA) for the period of 12 March 2021 – 31 March 2023 while assigned overseas (Korea) which has resulted in a debt of \$16,838.93. She has previously submitted a request to cancel the debt through the finance office, however she was informed that there were no regulatory grounds to support this request. She argues that the error made was by the finance office in Korea, the agency that provided her with incorrect information.

a. In a self-authored letter, the applicant provides a chronological account of her efforts to address the BAH debt. She notes that on 25 May 2021, she advised the finance office that her spouse had relocated from Queens, NY, to Coconut Creek, FL, therefore her BAH rate needed to be changed accordingly. Upon review of her submitted documentation (original and amended orders) and the applicable regulatory guidance, she was advised that she could either change the rate or leave it alone as supported by the original orders; she opted to leave it alone.

b. On or about 22 November 2021, she inquired about her BAH entitlement with the finance office due to her extension. She provided all the documents that she previously submitted. She was then advised that the information previously provided was incorrect. Documents would then be submitted to correct the error. In March 2022, she was contacted by the finance office and advised that additional errors were noted within her finance records. When the Finance Office originally processed the BAH location rate change, it incorrectly listed that the effective date as 20 May 2021, corresponding with the date the amended order was created. The correct date should have been 12 March 2021, the day she in processed Korea. Therefore, action would be taken to correct her BAH rate to reflect the correct location for the period of 12 March 2021 – 19 May 2021 resulting in a debt. She requested remission of the debt because the recoupment of funds was causing her financial hardship. She was later advised despite her due diligence her request was denied noting that she waited too long (months) to report the error.

c. The Criminal Investigations Division (CID) initiated a larceny of government funds investigation at Fort Hamilton and the CID office in Korea closed it out. The investigation was initiated to address the BAH debt. The CID investigation determined that the applicant was not at fault. However, she was deemed liable for repayment of \$16,838.93. Since the debt was initiated, she made payments totaling \$7,466.33 between November 2021 and December 2022. The collections were suspended due to her submission of a debt remission packet. After the denial of her request, recoupment actions continued until she was discharged from military service. This document is further provided in its entirety within the supporting documents for the Board member's review.

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

- a. On 16 August 2010, the applicant enlisted in the Regular Army.
- b. On 22 December 2020, Headquarters, U.S. Army Garrison, Fort Leonard Wood issued Orders Number 357-182 ordering the applicant to proceed on a Permanent Change of Station (PCS) from Fort Leonard Wood, MO, to Camp Humphreys, Korea, with a 10 May 2021 report date. The applicant was authorized shipment of household goods and the movement of her dependents to Queens, NY.
- c. On 22 February 2021, the U.S. Army Human Resources Command issued Orders Number 53-12 announcing the applicant's promotion to sergeant first class (SFC)/E-7, effective 1 March 2021.
- d. On 20 May 2021, Headquarters, U.S. Army Garrison, Fort Leonard Wood issued Orders Number 140-183 amending Orders Number 357-182 to reflect movement of the applicant's dependents to Coconut Creek, FL, rather than Queens, NY.
- e. On 4 April 2023, Headquarters III Corps and Fort Hood issued Orders Number 094-0185 reassigning the applicant to the transition point pending her separation processing, effective 1 September 2023.
- f. On 31 March 2023, the Department of the Army issued Orders Number 4353326 ordering the applicant to proceed on a PCS from Camp Humphreys, Korea, to Fort Hood, TX, effective 30 March 2023.
- g. On 1 September 2023, the applicant was honorably discharged from military service in accordance with Army Regulation 635-200 (Administrative Separations – Enlisted Personnel) due to her non retention on active duty. At the time of her separation, the applicant received \$38,223.90 in Separation Pay.

3. The applicant provides:

- a. Memorandum – Subject: Basic Housing Allowance Inquiry, dated 25 May 2021, reflective of the applicant's account of events taking place on 25 May 2021 when she visited the finance office in Korea. The applicant notes being advised that in accordance with Department of Defense (DoD) 7000.14-R (Financial Management Regulation (FMR)), if the dependent relocates to another residence at their own expense while the service member is serving an unaccompanied tour, the service member may continue to receive BAH at the rate previously authorized i.e., the old permanent duty station or the dependents location prior to the move.

b. Memorandum – Subject: Report of Investigation- Initial Final, dated 30 January 2023, reflective of the findings of the alleged larceny of government funds committed by the applicant between 12 March 2021 – 16 November 2022. The investigation determined that probable cause did not exist to believe that the applicant committed the offense of larceny of government funds.

c. Email communication reflective of the findings of the CID investigation into the applicant's alleged BAH fraud being unfounded.

d. Memorandum – Subject: Remission or Cancellation of Indebtedness, dated 11 August 2023, reflective of the disapproval of the applicant's request for debt remission noting that there were no grounds to remit or cancel the debt based on hardship and/or injustice. The applicant was advised of her right to appeal to this Board.

e. Memorandum – Subject: Notice of Indebtedness, dated 13 December 2022, reflective of the applicant's contention with the debt and election to dispute the \$5,629.20 COLA debt. The applicant was afforded 30 days to dispute the debt.

f. Memorandum – Subject: Notice of Indebtedness, dated 7 December 2022 reflective of the applicant's contention with the debt and election to dispute the \$8,702.84 BAH debt. The applicant was afforded 30 days to dispute the debt.

g. Email communication reflective of communication concerning the applicant's BAH and COLA debt. On or about 25 March 2022 the applicant was advised that she would have a debt for the difference in BAH and COLA entitlements between 12 March 2021 – 19 May 2021.

h. DA Form 4187 dated 7 December 2022, reflective of the applicant's submitted request to stop CONUS COLA, effective 11 March 2021, due to the changing of her dependent's location from NY to FL.

i. DA Form 2142 dated 7 December 2022, reflective of the inquiry submitted pertaining to the applicant's CONUS COLA entitlements.

j. Memorandum – Subject: BAH, dated 25 March 2022, reflective of the Financial Management Inspectors (FMI) account of the actions taken by the applicant regarding her BAH and CONUS entitlements. The FMI notes that the finance office will process a transaction to correct the BAH location for the period of 12 March 2021 – 19 May 2021 and cancel all of the applicant's CONUS COLA entitlements. The FMI further noted that the applicant made reasonable attempts to correct her BAH location and that the inexperience of the finance office personnel and poor interpretation of the FMR resulted in the delay of correcting the applicant's BAH location.

k. Email communication reflective of the applicant being advised of the incurred debt.

l. DA Form 5960 dated 25 March 2022, reflective of the applicant's submitted request for a change of her BAH entitlements based upon her dependent residing in Coconut Creek, FL, effective 12 March 2021.

m. Email Communication reflective of the applicant being advised that the estimated debt amount would be around \$2,200.00 – \$2,300.00.

n. DA Form 5960 dated 25 May 2021, reflective of the applicant's submitted request for a change of her BAH entitlements based upon her dependent's location in Coconut Circle, FL, effective May 2021.

o. DA Form 2142 dated 25 May 2021, reflective of the applicant's submitted inquiry concerning her BAH entitlement's.

p. Spreadsheet reflective of a record of the applicant's submission of BAH documents on 22 November 2021.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was 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 majority found the applicant's statement and record showed the applicant attempted to amend the basic allowance for housing (BAH) from New York to Florida based on the dependent relocation on 25 March 2022; therefore the Board majority concluded partial relief was warranted from this date. The Board minority concluded the investigation revealed no probable cause existed to believe the applicant committed the offense of larceny of government funds and determined full relief was appropriate.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	:	:	GRANT FULL RELIEF
:	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing the applicant submitted an exception to policy request to the U.S. Army Human Resources Command (HRC) to retain the BAH payment effective 25 March 2022
- showing HRC received and approved the request, provided all other criteria is met

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any additional payment in excess of the above.



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 7000.14-R (Financial Management Regulation) Volume 7A, Chapter 26 (Basic Allowance for Housing) provides that effective 1 July 2001, the Secretary concerned may pay Basic Allowance Housing (BAH) based on the old station rate in situations where members are making a Permanent Change Station (PCS) to a dependent restricted/unaccompanied Outside the Continental U.S. (OCONUS) assignment and dependents are residing separately from the member. The Secretary concerned must determine if it is more equitable to pay the member based on the old duty location rate.

When a service member is assigned to an unaccompanied tour at a permanent duty station OCONUS and the dependents relocate their permanent residences in the U.S., then the payable BAH rate is that which is prescribed for the area within the U.S. where the dependents reside for the location of the old permanent residence through the day before one or more dependents arrive at location of new permanent residence. Entitlement to BAH at the rate applicable to the location of the new permanent residence will begin on the day one or more dependents arrive at that location.

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.

a. Paragraph 1-13 (Injustice) pertains to debts arising because a Soldier has been erroneously overpaid. Injustice entails wrongs or misrepresentation on the part of the Government caused by persons acting in their official capacity. To prove an injustice took place, the Soldier must show that he/she did not know and could not have known of the payment errors. The Soldiers must also prove that he or she made appropriate inquiries to the proper authority but was informed that the payment was correct.

b. Paragraph 1-14 (Hardship) discusses the cancellation of a debt to the government based solely on hardship. Hardship is defined as repayment that greatly affects the welfare of a Soldier, his or her Family Members, or both. Hardship also exists if repayment causes undue suffering to the Soldier and his Family. When applying for reduction or cancellation for hardship, the Soldier acknowledges the debts as valid but that payment would result in extreme hardship to the Soldier and his or her dependents. Soldiers seeking a remission or cancellation of indebtedness based on hardship must document their financial hardship with impact statements and full financial disclosure on their application. Expenses caused by excessively high standards of living or by mishandling of personal finances are not a basis for a hardship remission or cancellation of debt.

3. AR 15-185 (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 that applicant's 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//