

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 November 2024

DOCKET NUMBER: AR20240001969

APPLICANT REQUESTS: reversal of the U.S. Army Human Resources Command (AHRC) decision to disapprove his request for remission of his Basic Allowance for Housing (BAH) debt.

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number R-04-009783, 21 April 2020
- Orders Number R-04-009783A01, 30 April 2020
- Memorandum for Record (MFR) - Subject: Assumption of Command Authority in accordance with (IAW) [Army Regulation (AR)] 600-20 (Army Command Policy), paragraph 2-8, 16 June 2022
- DA Form 2823 (Sworn Statement), 16 May 2023
- Office of the Deputy Chief of Staff, G-1 Memorandum - Subject: BAH Secretarial Waiver - [Applicant], undated
- DD Form 1561 (Statement to Substantiate Payment of Family Separation Allowance (FSA)), 24 April 2023
- Office of the Deputy Chief of Staff, G-1 MFR - Subject: BAH Secretarial Waiver - [Applicant], 26 April 2023
- DA Form 5960 (BAH Authorization and Dependency Declaration), 16 May 2023
- Army Military Pay Office Fort Bragg, NC Memorandum - Subject: Receipt of Remission Packet Acknowledgement, 14 May 2023
- DA Form 3508 (Application for Remission or Cancellation of Indebtedness), 14 May 2023
- MFR - Subject: Debt Remission for Injustice, [Applicant], 25 May 2023
- Unit Transmittal Letter, 5 June 2023
- MFR - Subject: Debt Remission for Injustice, [Applicant], 24 June 2023
- AHRC Memorandum - Subject: Remission or Cancellation of Indebtedness [Applicant], undated

FACTS:

1. The applicant states:

a. On 1 February 2023, he incurred a \$15,231.00 BAH debt that he was made aware at the end of month Leave and Earnings Statement. Senior Leader Development Office (SLDO) did not have a copy of his previous BAH waiver at the time of his accession due to the action being worked and completed by AHRC. Furthermore, the BAH Waiver process for the Army Reserve was delegated to the Office of the Chief of Army Reserve (OCAR) G-1 in accordance with All Army Activities (ALARACT) Message Number 011/2022. OCAR G-1 also did not have a copy of his waiver.

b. After inquiries to Headquarters, Department of the Army (HQDA), he was informed that the previously approved BAH waiver was only approved to July of 2022. He was never officially notified that the approved BAH waiver had an end date, thus, he was unaware of a requirement to resubmit a request for a BAH waiver extension.

c. In February 2020, he was selected as the 14th Command Sergeant Major (CSM) of the U.S. Army Reserve Command (USARC). The Army Reserve CSM is the senior enlisted Soldier within USARC and serves as the Senior Enlisted Advisor to the Commanding General, Chief of the Army Reserve. The Army Reserve CSM position is a One-Time Occasional Tour (OTOT) Active Guard/Reserve (AGR) position that requires the Soldier to be on orders under Title 10, U.S. Code (USC), section 12301(D), AGR for three years with the potential to extend up to four years.

d. On 18 May 2020, he officially entered the AGR program. Prior to being assessed to the program, he submitted his request for a BAH waiver through the HRC USAR Sergeants Major Management Division, to HQDA for approval. The justification for which it was based on was his dependent's location in Westbury, NY. His spouse E__ is a licensed New York State Attorney employed by the Police Department of New York, New York. She was appointed in March 2022 in the capacity of the Assistant Commissioner of Police, Suffolk County, NY. The position of Assistant Commissioner of Police is a politically appointed position appointed by the County Executive.

e. In May of 2020, he was informed that his request for BAH was approved and he would receive BAH for his dependent's location at Westbury NY. He was further informed that waiver would be processed to the Defense Finance and Accounting Service (DFAS) through the Fort Knox Military Financial Office since he was a new accession into AGR program. He was never provided the approved BAH Secretarial waiver and was under the understanding that the waiver was for the length of the OTOT, unless conditions changed.

f. In March of 2023, he requested an extension to his previous BAH waiver to OCAR G-1, however, they were only able to approve the request with an effective date of 15 March 2023, and not back date the waiver to July 2022. Due to the reasons stated above, and neither AHRC, SLDO or OCAR having a copy of his BAH Waiver, he is

requesting a "remission" of his debt. Had he known about the expiration date of the BAH waiver he would have requested an extension request much earlier.

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

a. Having prior Regular Army and U.S. Army Reserve (USAR) service, the applicant reenlisted in USAR on 25 April 1993, 23 March 1996, and 2 February 2002.

b. On 24 August 2004, Headquarters, 77th U.S. Army Regional Readiness Command published Orders Number 04-237-00006, which promoted the applicant to the rank/grade of sergeant major (SGM)/E-9, effective 18 September 2004.

c. On 4 December 2004, he reenlisted in the USAR for an indefinite period.

d. On 21 April 2020, AHRC published Orders Number R-04-009783, which ordered the applicant to active duty in an AGR status for 3 years, with a report date to USARC, Fort Bragg (now Fort Liberty), NC on 11 May 2020. The purpose on the order shows CSM. On 30 April 2020, the report date was amended to show 18 May 2020.

e. On 23 February 2022, AHRC published Orders Number R04009783A02 amending Order Number R04009783 to show the released from active duty (REFRAD) date as 17 May 2024 vice 10 May 2023, and to add to the additional instructions "OCAR approved 12 month REFRAD extension."

f. On 26 February 2024, DA Form 4187 (Personnel Action) shows the applicant requested an exception to policy to be extended beyond his 4-year OTOT tenure. His tenure ended 3 May 2024 with his current orders ending 17 May 2024. He requested to be extended to 17 July 2024 (61days). He requested to extend as the Army Reserve CSM which would allow him to out-process Fort Liberty, NC, close out of transitional and accrued leave while on active duty and transfer to the Retired Reserve.

g. On 19 March 2024, the Office of the Deputy Chief of Staff, G-1, Chief, Policy Integration Division approved the applicant's request to serve beyond a OTOT length with a REFRAD no later than 17 July 2024.

h. On 10 April 2024, AHRC published Orders Number R04009783A04 amending Order Number R04009783 to show REFRAD: 17 July 2024 vice 17 May 2024, and to add to the additional instructions "OCAR approved 2 month REFRAD extension."

i. His record contained a Nassau County Judgement of Divorce which shows his marriage to E_ M_ L_ ended on 17 April 2024.

j. On 6 May 2024, AHRC published Orders Number 127-0004, which released the applicant from active duty and assigned him to the USAR Control Group (Reinforcement) AHRC, Fort Knox, KY on 18 July 2024.

k. On 18 July 2024, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was honorably released from active duty and was transferred to the USAR Control Group (Reinforcement). He completed 4 years, 2 months, and 1 day net active service this period.

3. In support of his application the applicant provides:

a. MFR - Subject: Assumption of Command Authority IAW AR 600-20, paragraph 2-8, dated 16 June 2022, showing Lieutenant Colonel K_ A_ K_ assumed command of Special Troops Battalion, U.S. Army Forces Command-USARC, Fort Bragg, NC.

b. DA Form 2823 dated 16 May 2023, wherein, he provided a timeline of events pertaining to his contentions related to his debt, and he reiterated the statements/claims shown on his application to the Board.

c. Office of the Deputy Chief of Staff, G-1 (Pentagon) Memorandum - Subject: BAH Secretarial Waiver - [Applicant], undated, wherein, the Deputy Chief, Compensation and Entitlements Division stated, effective the applicant's report date, his request for a policy waiver to continue to receive BAH based on his dependent's location, Westbury, NY 115XX, is approved through "31 July 2022 only." The applicant's request was approved pursuant to Permanent Change of Station (PCS) Order Number R-04-009783 dated 21 April 2020 based on his spouse's employment obligations. The applicant must provide a copy of this waiver to his supporting finance office. This memorandum will be submitted to his personnel records via the Interactive Personnel Electronic Records Management Systems (IPERMS).

d. DD Form 1561 dated 24 April 2023, which shows Captain L_ submitted a request for FSA-T (Temporary).

e. Office of the Deputy Chief of Staff, G-1 (OCAR) MFR - Subject: BAH Secretarial Waiver - [Applicant], dated 26 April 2023, wherein, the OCAR, Deputy Chief of Staff, G-1, stated, effective 15 March 2023, the applicant's request for a policy waiver to receive BAH based on his dependent's location, Westbury, NY 115XX while he is assigned to Fort Bragg, NC, is approved through 17 May 2024 pursuant to PCS Order Number R-04-009783 dated 21 April 2020. The applicant must provide a copy of this waiver to his supporting finance office. This memorandum will be submitted to his personnel records via the IPERMS.

f. DA Form 5960 dated 16 May 2023, which shows the applicant recertified his with dependents (married) BAH declaration.

g. Army Military Pay Office Fort Bragg, NC Memorandum - Subject: Receipt of Remission Packet Acknowledgement, dated 14 May 2023, showing he acknowledged receipt of remission packet and instructions on completing the packet.

h. DA Form 3508 dated 14 May 2023, which shows the applicant submitted an application for remission or cancellation of indebtedness related to his BAH debt in the amount of \$15,231.00. The application was based on injustice.

i. MFR - Subject: Debt Remission for Injustice, [Applicant], dated 25 May 2023, which shows his battalion commander recommended approval of his request for debt remission.

j. Unit Transmittal Letter dated 5 June 2023, which lists DA Forms 5960 and DA Form 3508 for the applicant.

k. MFR - Subject: Debt Remission for Injustice, [Applicant], dated 24 June 2023, which shows the Army Reserve Headquarters-Fort Bragg, Deputy Chief of Staff recommended approval of his request for debt remission.

l. AHRC Memorandum - Subject: Remission or Cancellation of Indebtedness [Applicant], undated, wherein, the HRC, Chief, Soldier Programs and Services Division disapproved the applicant's request for remission or cancellation of indebtedness. The HRC official stated:

(1) The application for remission or cancellation of indebtedness for the applicant in the amount of \$15,231.00 has been reviewed and is disapproved. The review determined that no grounds exist to remit or cancel the debt based on hardship and/or injustice. In the implementation guidance for BAH, Overseas Housing Allowance (OHA), and Cost of Living Allowance (COLA) Secretarial Waiver Program states that "the intent of the BAH waiver program is to ease the transition of a PCS move to the new Permanent Duty Station (PDS) in the continental United States (CONUS) or outside the continental United States (OCONUS)". Under this premise, the intent of his initial waiver was to ease the transition for his dependents to move to his PDS and therefore his debt does not meet the criteria for remission.

(2) The applicant can apply to the Army Board for Correction of Military Records (ABCMR) for further review if he feels an injustice occurred. Guidance for this process can be found in AR 15-185 (ABCMR). This response does not imply that an error or injustice occurred. Neither will mere submission of the request guarantee a formal hearing or result in any favorable action taken. Each case is considered on the

evidentiary information provided with the final determination based on the merits of the individual case.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence of record shows in February 2020, the applicant was selected as CSM of the U.S. Army Reserve Command that required him to be on orders under 10 USC 12301(D) AGR for three years with the potential to extend up to four years. He entered the AGR on 18 May 2020. He submitted and received an approved BAH Secretarial Waiver based on his dependent's location in Westbury, NY 11590, through 31 July 2022 only. On 9 March 2022, the applicant extended his tour. However, when the original waiver expired, the applicant did not request a new BAH waiver. He continued to collect the approved BAH rate, despite not having an approved waiver beyond 31 July 2022. In February 2023, he incurred a \$15,231 BAH debt because his previously approved BAH Waiver was only approved to July 2022.

b. The applicant claims he was not officially informed that the approved BAH Waiver had an end date, and that he was unaware of a requirement to resubmit a request for a BAH Waiver Extension. Accordingly, when the debt issue surfaced, in March 2023, he submitted a new waiver which was approved, but with an effective date of 15 March 2023. The Board accepted the applicant's argument and timelines. The Board found it reasonable to believe that had the applicant known about the expiration date of the BAH Waiver, he likely would have timely requested an extension earlier. The OCAR approved his waiver from his report date in 2020 through 31 July 2022 and again from 15 March 2023 through 17 May 2024. Therefore, the Board determined an injustice occurred and voted to correct the record to show the applicant timely submitted and received approval of a BAH Waiver for the period 1 August 2023 through 14 March 2024 based on his dependent's location, Westbury, NY 11590.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

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

a. Showing the applicant timely submitted a request for a BAH Waiver for the period 1 August 2023 through 14 March 2024 based on his dependent's location, Westbury, NY 11590, through the Office of the Chief of Army Reserve to the Army G-1 Compensation and Entitlement Division

b. Showing the Army G-1 Compensation and Entitlement Division timely received and approved the applicant's request for a BAH Waiver for the period 1 August 2023 through 14 March 2024 based on his dependent's location, Westbury, NY 11590

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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. All Army Activity Message Number 011/2022 - Implementation Guidance for the BAH, Overseas Housing Allowance (OHA), and Cost of Living Allowance (COLA) Secretarial Waiver Program, dated 17 February 2022, states, this implementation guidance applies to Active Duty Soldiers (Title 10 and Title 32, U.S. Code (USC)) authorized BAH, OHA, and COLA at the with-dependent rate. The dependents are required to reside with the Soldier at the previous duty station or at a Government approved designated location, prior to departing on PCS orders.

a. Paragraph 4 (Purpose) states, the purpose of the waiver program is to temporarily stabilize the Soldier's dependents when circumstances require dependents to reside separately. The intent of the waiver program is to ease the transition of a PCS move to the new PDS in the Continental United States or Outside the Continental United States.

b. Paragraph 5.J.1. states, a spouse who is gainfully employed at the beginning of the covered relocation period, waivers will be considered for spouses who require a temporary delay of travel to the new duty station due to contractual obligation, professional license reciprocity agreements, or other circumstances that may cause additional financial penalties due to early termination of employment. Soldiers requesting a waiver due to contractual obligation, professional license reciprocity agreements, or other circumstances that may cause additional financial penalties due to early termination of employment must also be able to demonstrate that their spouses have attempted to secure employment at the new duty station via spouse preference or other employment programs supported by the Army and the Department of Defense. "Waivers will not be considered for spouses who desire to remain at the old duty station or designated location to continue employment as long as they wish or for employment initiated or continued after the Soldier receives PCS orders to the new duty station." A letter substantiating employment under contract from the employer must accompany the request.

c. Paragraph 12 states, to submit a request for a waiver consideration, Soldiers must submit requests electronically in Portable Document File to the following component offices: (1) Active Component enlisted Soldiers must email requests to HRC Fort Knox using email address: usarmy.knox.hrc.mbx.epmdpsa-branch@army.mil. (2) USAR Soldiers must email requests to OCAR: usarmy.usarc.ocar.mbx.glpolicy@army.mil.

d. Paragraph 17 (Waiver Effective Date and Expiration), waivers approved under this message are effective the date requests are received at Headquarters Department of the Army, Deputy Chief of Staff, G-1, or the date the waiver is approved. Waivers will expire not more than 180 days from the approval date or as specified in the approval

memo. Waivers and the covered relocation period may be extended on a case-by-case basis based on the merits of the request. If the Soldier's eligibility expires for any reason during the covered relocation period, that period is terminated, and the housing allowance is paid at the PDS where the soldier is assigned at that time. If the Soldier departs the old PDS, and the persons that are the basis of the eligibility do not arrive at the new PDS within the covered relocation period, the housing allowance is paid at new PDS location rate beginning the day after the relocation period ends.

2. 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 Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. In accordance with the authority of Title 10, USC, section 7837 and/or Title 32, USC section 710(c), 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.

3. Title 10, USC, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.

4. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

//NOTHING FOLLOWS//