

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240002205

APPLICANT REQUESTS: cancellation/remission of Basic Allowance Housing (BAH) debt.

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Notice of Indebtedness to an Officer, 14 February 2024
- DA Form 2823 (Sworn Statement), 16 January 2024
- DA Form 3508 (Application for Remission or Cancellation of Indebtedness), 19 January 2024
- Character Reference letters
- Medical documents
- Memorandum – Subject: Remission or Cancellation of Indebtedness, 31 August 2023
- Photographs

FACTS:

1. The applicant states in pertinent part that he initially had a BAH debt for \$135,121.41. As of the date of this application, this amount has been reduced to \$119,478.88. He contests that at the time, he was an immature second lieutenant (2LT)/O-1 who was unaware of the process required to change his BAH entitlement while his dependents were stuck in China. In January 2020, during the COVID-19 pandemic, his dependents entered China. They were supposed to return to his location (South Korea) in March 2020, but the COVID-19 restrictions prevented them from doing so for several months. His unit requested a by name list of Soldiers who had family members in China. He annotated the list accordingly with no additional information provided regarding BAH changes. At the time, he was suffering from progressive mental health issues (major depressive disorder) and believed that he was permitted to not act as if he and his family were separated. He notes that adversity experienced during his childhood made him realize that money equated to safety and at the time, he felt that separating from his family to collect more money was the right thing to do. Admittingly he was wrong. He is pending medical retirement and notes that the insurmountable debt

will be impossible for him to repay as his mental health continues to worsen. As a result, he would like remission from the BAH debt.

2. A review of the applicant's available service records reflects the following:

a. On 26 March 2018, the applicant was legally married as recognized by the State of California.

b. On 13 August 2018, the applicant enlisted in the Regular Army for 3 years and 29 weeks. On 15 April 2019, the applicant was honorably discharged from active duty and transferred into the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve) pending appointment as a commissioned officer.

c. On 16 April 2019, the applicant was appointed an active-duty commission. On or about 6 October 2019, the applicant was reassigned to Korea.

d. On 14 November 2023, an Informal Physical Evaluation Board convened finding the applicant physically unfit for continued military service with a recommendation that he be permanently medically retired due to major depressive disorder.

e. On 27 February 2024, the Installation Management Command – Pacific Region, U.S. Army Garrison issued Orders Number 058-0005 reassigning the applicant to the transition point pending separation processing on 24 May 2024.

f. On 24 May 2024, the applicant was honorably medically retired from military service.

3. The applicant provides the following a:

a. Memorandum – Subject: Notice of Indebtedness to an Officer, dated 14 February 2024, the applicant was advised of a \$135,121.41 BAH debt. The applicant disagreed with the debt and requested remission.

b. DA Form 3508 dated 19 January 2024, reflective of the applicant's submitted request for debt remission comprised of \$129,621.11 BAH and \$6,250.00 Family Separation Allowance (FSA) = \$135,871.11 total.

c. Character Reference letters provided by persons familiar with the applicant's personal and professional character. All parties refer to the applicant as one with high moral values. However, a fellow officer, who served with the applicant in Korea, recalls the applicant advising that his dependents resided with him in the Senior Living Quarters on Camp Humphreys, Korea. These documents are further provided in their entirety for the Board members review within the supporting documents.

d. Medical documents reflective of the applicant's multiple medical encounters between March 2020 – March 2023.

e. Memorandum – Subject: Remission or Cancellation of Indebtedness, dated 31 August 2023, reflective of the applicant's commander's recommendation that the applicant's request for BAH debt remission be approved based upon a financial hardship. The applicant was on an unaccompanied tour in Korea, residing in Senior Leader Quarters authorized entitlement to BAH and FSA. The applicant requested the presence of his family as he was dealing with mental instability while serving in Korea. His family joined him to provide support during his tour and through his medical board process. According to neurology diagnosis from his Neurologist, the applicant has two neurological diagnoses: Focal Epilepsy with preserved awareness and Chronic Intractable Migraine for which he was medically boarded for. Unfortunately, his condition may have caused severe cognitive impairments affecting his decision-making abilities, and overall cognitive functioning. If the debt remains, the applicant will encounter a prolonged period of financial strain. This could then pose further risk to his mental health.

f. Photographs reflective of the applicant, another service member and a child. Additional photos and previous statements provide by the applicant indicate that the other service member (first lieutenant J\_H\_) passed during the COVID-19 pandemic prompting residual mental health concerns being experienced by the applicant. There is also a picture of what appears to be a brain and a vehicle being transported on a trailer.

4. On 4 November 2024, the Department of the Army, Deputy Chief of Staff, G-1, Financial Management Specialist provided an advisory opinion recommending disapproval of the applicant's request noting that a Criminal Investigation Division investigation revealed that the applicant's dependents traveled with him to Korea under approved command sponsorship orders. Based on the orders, the applicant was authorized an overseas housing allowance at the with-dependent rate, provided he was not assigned to family type government quarters., had a lease agreement, and a certified DD Form 2367 from the supporting housing office. However, the applicant intentionally misinformed the Army regarding his dependency status to receive BAH based on a location in California he was not entitled to receive.

5. On 5 November 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments.

6. On 6 November 2024, the applicant responded to the advisory opinion expanding on the conditions prompting the BAH debt. In addition to the aforementioned argument, the applicant adds the following chronological account of events regarding his assignment in South Korea.

- 6 October 2019 – the applicant arrived in South Korea
- 17 December 2019 – the applicant's dependents arrived in South Korea
- 7 January 2020 – the applicant's dependents departed for China with a projected return flight of 15 April 2020; all flights cancelled due to COVID-19 restrictions
- 16 October 2020 – the applicant's dependents returned to South Korea (the earliest return flight following the lifting of COVID-19 restrictions in China)
- 14 August 2021 – the applicant's dependents returned to China
- September 2022 – the applicant's dependents returned to South Korea
- February 2023 – the applicant was flagged following his arrest by CID
- August 2023 – the flagging action was removed following the correction of the applicant's BAH entitlements

This argument is further provided in its entirety for the Board members review within the supporting documents. In support of his contention, the applicant provides the following additional documents:

- a. Orders Number 058-0005 reflective of the applicant's reassignment to the transition point pending separation processing on 24 May 2024.
- b. Department of Veterans Affairs (DVA) – Rating Decision, 5 June 2024, reflective of the applicant's rated conditions as awarded by the DVA.
- c. Updated Narrative Summary (NARSUM) Addendum, reflective of the applicant's NARSUM being updated to reflect the inclusion of his Commanders Statement and the addition of 2 medical conditions (Post Traumatic Stress Disorder and Tension, Migraine Headaches) which fail to meet retention standards.
- d. DD Form 214 reflective of the applicant's service on active duty from 16 April 2019 – 24 May 2024.
- e. Photographs reflective of Soldiers participating in military related activities.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. According to the Army G-1 advisory official, a Criminal Investigation Division investigation revealed that the applicant's dependents traveled with him to Korea under approved command sponsorship orders. Based on the orders, the applicant was authorized an overseas housing allowance at the with-dependent rate, provided he was not assigned to family type government quarters. He had a lease agreement, and a

certified DD Form 2367 from the supporting housing office. However, the applicant intentionally misinformed the Army regarding his dependency status to receive BAH based on a location in California that he was not entitled to receive. Based on this evidence, the Board determined his debt is a valid debt. The applicant received monies he was not entitled to receive. Therefore, the Board determined relief is 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. Army Regulation (AR) 15-185 (ABCMR) paragraph 2-9 states 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.
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. Department of Defense Financial management regulation, Volume 7A, Chapter 26 provides that Basic Allowance Housing (BAH) is a monthly allowance for housing. This allowance is authorized for members with and without dependents. Basic Allowance for Housing is intended to pay only a portion of housing costs. Basic Allowance for Housing will consist of BAH, BAH-II, BAH Difference (BAH-DIFF), Partial BAH, Overseas Housing Allowance (OHA), and Family Separation Housing (FSH). Basic Allowance for Housing is not payable to members who are assigned to quarters of the United States appropriate to the grade, rank, or rating of the member and adequate for the member and dependents, if with dependents. Any member who submits a claim for BAH which contains false statements is subject to court-martial or criminal prosecution. In addition, fraudulent acceptance of benefits may cause a civilian recipient to be subject to criminal prosecution. The law provides for severe penalties of imprisonment and a fine. For military personnel, it can include dishonorable separation, total forfeitures, and confinement.

//NOTHING FOLLOWS//