

IN THE CASE OF: [REDACTED]

BOARD DATE: 31 October 2024

DOCKET NUMBER: AR20240002600

APPLICANT REQUESTS: remission from the recoupment of Voluntary Separation Incentive (VSI)/Special Separation Bonus (SSB) of \$65,579.53.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 February 2023
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20190000315
- Memorandum – Subject: Request for Reconsideration of Decision to Overrule Grant of Full Relief, 2 October 2022
- ABCMR Docket Number AR20220010772, 21 May 2023
- Memorandum – Subject: Advisory Opinion, 22 February 2021
- Memorandum – Subject: Army Board for Correction, Pay Entry Basic Date (PEBD), 1 March 2022
- Defense Finance and Accounting Service (DFAS) letter, 4 April 2023
- Department of Veterans Affairs letter, 24 April 2023
- Self-authored letter, 15 January 2024

FACTS:

1. The applicant states in pertinent part that DFAS is currently recouping his VSI/SSB at a rate of \$4,620.00 per month. As of August 2023, \$27,720.00 has already been recouped from his retirement pay.

a. In 1989, the applicant was appointed a commission in the active component. In 1999, the Voluntary Separation Incentive (VSI) was used as a force shaping tool for over-strength Military Occupational Specialty (MOS) 67B (Medical Administrator). After accepting the VSI/SSB, he was admitted to medical school. Upon completion, he returned to active service (2003) as a 61F (Physician, Internal Medicine), which was designated as an Army Medical Critical Shortage/Critical Skill MOS. He notes that this change of MOS met the intent of the VSI/SSB force shaping program and there was a

precedent for the Secretary of the Army (SECARMY) to remit the recoupment based on the successful implementation of this force shaping program.

b. He notes that he was unaware that VSI/SSB offered continuous creditable service without a break in service until 2017. However, the local personnel office reset his Pay Entry Basic Date (PEBD) to reflect 9 February 1993 rather than 5 May 1989. After petitioning the ABCMR for correction of his PEBD, the Board recommended that his PEBD be corrected to reflect September 1989.

c. Unaware that this was a unique case, and fearing setting a new precedent, DFAS protested the outcome of the case. Recognizing that this may be in violation of an internal policy as reflected in Federal law, his case was reconsidered by the Board. After review, the Board declined his request to change his PEBD. He argues that there is a lack of communication between the Department of Defense (DoD) and the Department of Veterans Administration as it appears that both entities are recouping his VSI/SSB. He fears that he will ultimately overpay the DoD. He requests the remission of his VSI/SSB debt because he believes that the Army fulfilled the intent of the force shaping program while filling a critical shortage MOS for over 20 years. Secondly, the cascading secondary effects surrounding this VSI/SSB challenges the equity and good conscience of the U.S. and gives the SECARMY good cause to remit this recoupment.

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

a. On 10 September 1989, the applicant was appointed an active-duty commission.

b. On 13 April 1999, Headquarters U.S. Army Medical Department Center and School and Fort Sam Houston issued Orders Number 103-0106 reassigning the applicant to the transition point pending separation processing. The applicant was identified as eligible to receive VSI/SSB based upon his service. However, if he subsequently qualified for retirement or retainer under Title 10 or 14 of U.S.C., he would have deducted an amount equal to the amount of the VSI/SSB not previously recouped.

c. On 20 August 1999, the applicant was honorably discharged from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty) provides that the applicant received \$65,577.33 in SSB. He was subsequently assigned to the U.S. Army Reserve (USAR) Control Group (Officer Active Duty Obligors). Upon entering the USAR, the applicant elected to participate in the Health Professions Scholarship Program (HPSP).

d. On 24 May 2003, the applicant was appointed as a Reserve commissioned officer. On 3 June 2003, the applicant entered into active duty.

e. On 19 April 2022, the Installation Management Command issued Orders Number 109-0007 retiring the applicant from military service, effective 28 February 2023.

f. On 28 February 2023, the applicant was honorably retired from military service.

3. The applicant provides the following a:

a. ABCMR Docket Number AR20190000315, reflective of the Board's approval of the applicant's submitted request for a change of his PEBD to reflect 7 September 1989 rather than 1993.

b. Memorandum – Subject: Request for Reconsideration of Decision to Overrule Grant of Full Relief, dated 2 October 2022, reflective of the applicant's request for reconsideration of Docket Number AR20190000315. The applicant states in pertinent part that in September 2022, DFAS overruled the Board's decision to grant a change of his PEBD. This argument is further provided in its entirety within the supporting documents for the Board member's review.

c. ABCMR Docket Number AR20220010772 dated 21 May 2023, reflective of the Board's denial of the applicant's submitted request for reconsideration of AR20190000315 noting that after review of all supporting documents, the Board determined relief was not warranted. In this case, the applicant's contentions, his military record, and regulatory guidance were carefully considered. Based upon the available documentation and the findings and recommendations of the U.S. Army Human Resources Command (AHRC) advisory opinion, the Board concluded there was insufficient evidence of an error or injustice warranting the requested change. At that time, the Board considered the applicant's contention that, because he was transferred into the Individual Ready Reserve as a requirement of VSI, that 4-year period while he was in the HPSP should be counted towards his PEBD. However, the Board found the statute, Department of Defense policy, and Army Regulation (as well as the HPSP agreement the applicant voluntarily signed) were extremely clear that the time he was a member of the HPSP cannot be counted in determining his PEBD. Rather the time he spent in the HPSP is statutorily excluded as creditable service for calculating the PEBD. The relief sought by the applicant is therefore precluded by statute.

d. Memorandum – Subject: Advisory Opinion, 22 February 2021, reflective of a submitted request for an advisory opinion from DFAS.

e. Memorandum – Subject: Army Board for Correction, PEBD, dated 1 March 2022, reflective of the ABCMRs approval to change the applicant's PEBD to reflect 7 September 1989. This change will result in a differential of 3 years, 5 months, and 2 days from his previous PEBD. DFAS was advised to apply the difference in pay (back

pay) for the previous 19 years towards the reimbursement if the VSI that the applicant had previously received in 1999.

f. DFAS letter dated 4 April 2023, reflective of the applicant being advised of the initiation of the recoupment action (\$65,579.53) associated with the previous receipt separation/severance pay because Federal law prohibits service members from receiving both separation pay, and retirement pay for the same period of service. Effective 1 August 2023, \$3,821.20 would be recouped monthly from the applicant's retirement pay.

g. Department of Veterans Affairs letter dated 24 April 2023, reflective of a summary of the applicant's benefits as provided by the DVA. The applicant was advised that a portion of his pay entitlements would be withheld until the \$65,577.33 in separation pay (minus taxes the total was \$47,215.68) is recouped.

h. Self-authored letter dated 15 January 2024, that applicant notes that the VSI/SSB has been recouped in its entirety, therefore he should be entitled to his full retirement effective 1 February 2024.

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. The applicant initially served on active duty from 10 September 1989 to 20 August 1999. Upon separation, he was identified as eligible to receive and received VSI/SSB based upon his service with a stipulation that, by law, if he subsequently qualified for retirement, he would have deducted an amount equal to the amount of the VSI/SSB not previously recouped. The evidence further shows that the applicant reentered active duty as a Reserve commissioned officer on 3 June 2003 and retired on 28 February 2023. By law, a Soldier may not receive separation pay and retired pay for the same period of service. Therefore, DFAS advised the applicant of the initiation of the recoupment action associated with the previous receipt separation/severance pay because Federal law prohibits service members from receiving both separation pay and retirement pay, for the same period of service. The Board found no evidence of error or injustice. Issues of payments and recoupments by the VA are not within the purview of this Board and should be addressed to that agency.

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.

10/31/2024

X

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 United States Code, Section 1174 (Separation Pay upon Involuntary Discharge or Release from Active Duty) provides that a member who has received separation pay under this section, or separation pay, severance pay, or readjustment pay under any other provision of law, based on service in the armed forces, and who later qualifies for retired or retainer pay under this title or title 14 shall have deducted from each payment of such retired or retainer pay an amount, in such schedule of monthly installments as the Secretary of Defense shall specify, taking into account the financial ability of the member to pay and avoiding the imposition of undue financial hardship on the member and member's dependents, until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay so paid.

A member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations of the Internal Revenue code. Notwithstanding the preceding sentence, no deduction may be made from disability compensation for the amount of any separation pay, severance pay, or readjustment pay received because of an earlier discharge or release from a period of active duty if the disability which is the basis for that disability compensation was incurred or aggravated during a later period of active duty.

2. 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//