

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240002749

APPLICANT REQUESTS: in effect –

- cancellation of garnishment of wages his for Basic Allowance for Housing (BAH) debt
- reimbursement for overpayment of BAH debt
- a personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statements (LES), 1-31 August 2020

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He is disputing the garnishment of his wages for overpayment of BAH. He has submitted a copy of his final LES that shows he has paid a great portion of the debt (\$3,135.00 or \$3,705.55 based on two LESs for August 2020) to be exact. No one is helping to resolve this situation and his retirement pay is continuing to be garnished. He would like for the Board to look at his last LES, deduct that amount from what is owed and refund him the difference. Also, this is the second time he is sending this document, so he will be sending this one certified mail to ensure there are no errors. This correction should be made because it is the fair thing to do.

b. He is a retired disabled veteran that deserves the right to receive all the pay that he earned. The oversight is on finance' behalf although the debt is owed, and he takes full responsibility, there was a debt paid and he was told there was nothing left to pay.

He is forced to pay his remaining balance which he has no problem doing but at least consider what was already paid.

3. A review of the applicant's official records show:

a. He enlisted in the Regular Army (RA) on 15 August 1989 and reenlisted in the RA on multiple occasions.

b. On 7 November 1998, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was "discharged" (released from active duty) and was transferred to the USAR Control Group (Individual Ready Reserve).

c. On 6 November 1998, prior to his release from active duty, he enlisted in the U.S. Army Reserve (USAR). He reenlisted and/or extended in the USAR and served in the Active Guard/Reserve continuously until he retired.

d. On 16 November 2007, the applicant was issued a marriage license in the Cayman Islands.

e. On 20 May 2015, the U.S. Army Human Resources Command published Orders promoting the applicant to the rank/grade master sergeant (MSG)/E-8, effective 1 June 2015.

f. A State of Indiana Lake County Superior/Circuit Court Decree of Dissolution of Marriage shows the applicant was married on 17 November 2007 and ended his marriage (divorce) on 27 September 2017.

g. On 11 May 2018, DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters (BAQ) and/or Variable Housing Allowance) shows the applicant requested to start BAQ (now Basic Allowance for Housing (BAH) without dependents.

h. On 31 August 2020, DD Form 214 shows the applicant was honorably retired by reason of sufficient service for retirement. Item 4a (Grade, Rate or Rank) shows MSG.

4. In support of his request the applicant provided LESs for the period of 1-31 August 2020, which show, in relevant part, a debt deduction in the amount of \$3,705.55, advance debt and allotment in the amount of \$3,135.00.

5. On 19 August 2024, the Deputy Chief of Staff G-1, Financial Management Specialist Military Pay Branch provided an advisory opinion for this case and recommended the Board partially approve the applicant's request to reduce his debt. The advisory official stated:

a. After careful review we recommend the Board partially approve request to reduce the debt for the applicant. "Reference: Department of Defense Financial Management Regulation (DoDFMR), Volume 16, Chapter 3."

b. The applicant separated from the Army on 31 August 2000 [sic]; at which time the pay system did not reflect that he had an open debt. The applicant's debts posted for the collection of BAH for the difference of with to without dependents and collected for 27 May 2019, through 30 September 2019, and 1 January through 31 August 2000, showing a debt total of \$3,135.00. This debt was paid in full at separation leaving a payment of \$2,034.31 sent to the applicant.

c. April 2021 additional BAH was collected for 28 September 2017, through 30 September 2019, due to the applicant divorcing in 2017. A debt of \$6,860.40 was referred to Out of Service Debts Defense Finance and Accounting Service in April 2021; \$55.08 for admin charges and interest were added to the debt for a total of \$6,915.38.

d. The collection of \$3,705.55, that the applicant refers to on his August 2020 LES was collected against the debt at separation. The full debt of \$6,915.38, did not have any collections from the applicant's pay taken since it was posted after separation.

e. The applicant is due \$1,178.00, plus the admin charges and interest of \$55.08, for a total refund of \$1,233.08, because of the duplicate collections of BAH 27 May 2019, through 30 September 2019.

6. On 21 August 2024, the applicant was provided with a copy of the G-1 advisory opinion to allow for comments or rebuttal. He did not respond.

#### BOARD DISCUSSION:

1. The Board determined 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.

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

a. The evidence shows the applicant separated from the Army on 31 August 2020 at which time the pay system did not reflect that he had an open debt. The applicant's debts posted for the collection of BAH for the difference of with to without dependents and collected for 27 May 2019, through 30 September 2019, and 1 January through 31

August 2000, showing a debt total of \$3,135.00. This debt was paid in full at separation leaving a payment of \$2,034.31 sent to the applicant.

b. In April 2021 additional BAH was collected for 28 September 2017, through 30 September 2019, due to the applicant's divorce in 2017. A debt of \$6,860.40 was referred to Out of Service Debts Defense Finance and Accounting Service in April 2021; \$55.08 for admin charges and interest were added to the debt for a total of \$6,915.38. The collection of \$3,705.55, that the applicant refers to on his August 2020 LES was collected against the debt at separation. The full debt of \$6,915.38, did not have any collections from the applicant's pay taken since it was posted after separation.

c. The Board reviewed and agreed with the advisory official's determination that the applicant is due \$1,178.00, plus the administrative charges and interest of \$55.08, for a total refund of \$1,233.08, because of the duplicate collections of BAH 27 May 2019, through 30 September 2019.

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 a request for reimbursement of the duplicate collections of BAH from 27 May 2019 through 30 September 2019 (\$1,178.00, plus the administrative charges and interest of \$55.08, for a total refund of \$1,233.08
- Showing the appropriate officer timely received, processed, and approved his request for reimbursement of duplicate collection

2. The Board further determined 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 relief in excess of that described above.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, USC, 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. DoDFMR 7000.14-R, Volume 16, Chapter 3, Paragraph 4.0 (Collection of Debt from Military Retirees and Survivor Benefit Plan (SBP) Annuitants), in pertinent part:

a. Paragraph 4.1 states, this section pertains to the collection of debt owed to DoD by military retirees, Retired Serviceman's Family Protection Plan annuitants, or SBP annuitants due to the overpayment of annuity payments. A debt may be the result of an overpayment to the military retiree, or an amount owed to the Government but unpaid by a military retiree. A debt may be for an overpayment of active duty pay and allowances, or other indebtedness arising from service on active duty.

b. Paragraph 4.2 (Due Process Requirements) states, the head of the military retiree pay office, Defense Finance and Accounting Service – Retired and Annuitant Pay, must ensure that it affords military retirees all legal rights relative to the indebtedness arising from overpayments of pay and allowances, including due process under Chapter 2. This includes providing the military retiree the opportunity to request a delay in collection of the debt under Title 37, USC, section 1007(c)(3)(B).

c. Paragraph 4.4.2. (Authority for Involuntary Collection) states, a military retiree's pay is available for repayment of indebtedness by involuntary offset without the military retiree's consent, provided the military retiree is afforded due process under Chapter 2, as follows:

- 4.4.2.1. Debts to the DoD, or any of its instrumentalities or other uniformed services, will be deducted from pay under Title 37, USC, section 1007(c);
- 4.4.2.2. Debts determined to be owed to another federal agency will be collected by salary offset under the authority of Title 5, USC, section 5514;
- 4.4.2.3. Debts determined to be owed to another federal agency will be collected by administrative offset under the authority of Title 31, USC, section 3716; and
- 4.4.2.4. Routine adjustments are authorized under Title 5, USC, section 5514

d. Paragraph 4.5 (Debt Transfer on Retirement) states, debts incurred while the military retiree was on active duty must be transferred on retirement to the military retiree pay office. Resume collection from retirement or retainer pay. It is not necessary to repeat the due process procedures prior to resuming collection.

3. 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, U.S. Code (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.

4. AR 15-185 (ABCMR) states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that applicants 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//