

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 October 2024

DOCKET NUMBER: AR20240002803

APPLICANT REQUESTS: reconsideration of his previous request for remission of debt associated with previously received Basic Allowance for Housing (BAH) and Family Separation Allowance (FSA).

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

- Self-authored letter in lieu of DD Form 149 (Application for Correction of Military Record)
- Army Board for Corrections of Military Records (ABMCR) letters and record of proceedings for ABCMR Docket Number AR20220004588
- Rebuttal to Docket Number AR20220004588 advisory opinion
- Postal Service (PS) Form 3811 (Domestic Return Receipt)
- Facsimile Coversheet
- Facsimile Transmission Report
- Army Review Boards Agency letter
- Office of the Deputy Chief of Staff G1 Memorandum, Subject: Advisory Opinion – [REDACTED] (the applicant), issue: BAH

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20220004588 on 1 June 2023. 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 Board reviewed and agreed with the Army G-1 advisory opinion and Defense Finance and Accounting Service (DFAS) decision to indebted the applicant for the overpayment of BAH and FSA based on his child. Department of Defense (DoD) policy requires the applicant to reside separately from his dependent to receive a housing allowance at the with-dependent rate based on the dependent's location. Since he was moved to his permanent duty station for 90 or more consecutive days, DFAS's decision is warranted. The Board determined the applicant is not authorized a BAH based on the dependent's location and a Family Separation Housing (FSH) while assigned to Saudi Arabia. Since the applicant's child lived at the

duty station, he is considered to have relocated to Saudi Arabia and, therefore, based on the preponderance of the evidence, BAH, FSH, and FSA are not payable.

2. The applicant states he request the reconsideration of his previous request for the remission of his indebtedness associated with BAH and FSA that he previously received. In making their original decision to deny his request, the Board did not have the opportunity to consider his rebuttal to the advisory opinion from the Chief, Military Pay Branch, Office of the Deputy Chief of Staff G1. According to the record of proceedings which stated he was provided the advisory opinion but did not respond by the suspense date. However, he has provided proof that he submitted a rebuttal prior to the suspense date.

a. He sent his response via United States Postal Service as shown on the PS Form 3811 which shows it was received at the Army Review Boards Agency on 13 December 2022 and was signed for by [REDACTED]

b. Facsimile coversheet which shows he sent his response through a facsimile machine on 7 December 2022 and the transmission report shows the status was okay.

c. His response to the advisory opinion was there continues to be confusion regarding the facts surrounding the circumstances. During the time in question, he had two dependents; one was his spouse and the other was his son, who was a full time student. He was initially on an unaccompanied tour to Saudi Arabia, during which his wife joined him in Saudi Arabia for a visit in excess of 90-days. He does agree that because of this he is not entitled to BAH and FSA associated with his spouse. However, he was separated from his son who was living in the residence at his home of record in [REDACTED] and his son never visited him in Saudi Arabia. In his original application, he provided evidence his son was a full time student at the University of [REDACTED] [REDACTED] such as a letter from the university confirming enrollment and the DD Form 137-6 (Dependency Statement Full time Student 21-22 Years of Age). He also provided the DD Form 2789 (Waiver/Remission of Indebtedness Application) and a sworn statement he previously submitted in an attempt to resolve the injustice. He requests the Board reconsider his request for remission of his indebtedness and consider his rebuttal to the advisory opinion.

3. A review of the applicant's service record shows:

a. On 4 June 1991, with prior enlisted Army National Guard (ARNG) service, the applicant executed his oath of office and was appointed as a Reserve commissioned officer.

b. On 23 August 1991, the applicant was married to [REDACTED] in [REDACTED]

- c. On 25 November 1991, the applicant executed his oath of office and was extended a temporary Federal recognition in the ARNG.
- d. On 3 January 1992, Special Orders Number 1, issued by the National Guard Bureau (NGB), appointed the applicant in the [REDACTED] ARNG and extended Federal recognition.
- e. On [REDACTED], the applicant's first daughter was born.
- f. On [REDACTED] the applicant's second daughter was born.
- g. On [REDACTED] the applicant's son was born.
- h. DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters and/or Variable Housing Allowance) shows on 13 January 2009 the applicant started his BAH with dependents. He was married and had three children who all lived in [REDACTED] with the applicant. The DA Form 5960 was certified on 3 February 2009.
- i. DA Form 5960 shows on 2 May 2015 the applicant recertified his BAH with dependents. He was married and his spouse lived in [REDACTED] with the applicant. There were no dependent children listed on the DA Form 5960. The DA Form 5960 was certified on 2 May 2015.
- j. On 6 November 2018, the applicant's son turned [REDACTED] years of age.
- k. On 22 February 2019, Orders Number HR-9053-00024, issued by the U.S. Army Human Resources Command, ordered the applicant to active duty for operational support with duty in Riyadh, Saudi Arabia, effective 28 April 2019. The additional instructions stated the duty was an unaccompanied permanent change of station.
- l. On 20 June 2020, the applicant was honorably released from active duty. DD Form 214 shows the applicant completed 1-year, 1-month, and 23-days of active service. It also shows in item 18 (Remarks) the applicant served in Saudi Arabia during the period of 5 May 2019 through 8 May 2020.
- m. On 30 June 2021, the applicant was assigned to the U.S. Army Reserve (USAR) Control Group (Retired Reserve). NGB Form 22 (Report of Separation and Record of Service) shows the applicant completed 30-years and 27-days of service.

4. During the processing of ABCMR Docket Number AR20220004588, the Chief, Military Pay Branch, Office of the Deputy Chief of Staff, G-1, provided an advisory opinion that states the following:

- a. Based on a careful review of the facts surrounding this situation, we recommend the Army Review Boards Agency disapprove the applicant's request for administrative relief. Based on the facts presented, we support the DFAS decision to indebted the applicant for the overpayment of BAH and FSA based on his child. DoD policy requires the applicant to reside separately from his dependent to receive a housing allowance at the with-dependent rate based on the dependent's location. Since the applicant's child was moved to his permanent duty station for 90 or more consecutive days, DFAS's decision is warranted.
- b. Since the investigation determined that the applicant's child relocated to his permanent duty station in Eskan Village, Saudi Arabia, and continued to live at the duty station, this is not considered a temporary social visit. Therefore, the applicant is not authorized a BAH based on the dependent's location and a FSH while assigned to Saudi Arabia. He is eligible to receive an overseas housing allowance based on his duty station for the periods 25 May 2019 through 15 March 2020 and 24 August 2019 through 15 March 2020, provided he has a lease agreement and a certified DD Form 2367.
- c. The purposes of FSH and FSA are to partially cover the added housing expense resulting from a government enforced separation from dependents while the member serves an unaccompanied overseas tour. Since the applicant's child lived at the duty station, he is considered to have relocated to Saudi Arabia and, therefore, BAH, FSH, and FSA are not payable.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board acknowledged advisory opinion's error in misidentifying which dependent relocated to the applicant's permanent duty station during his tour of duty in Saudi Arabia, but regardless of the error, concurred with the advisory official's conclusion that the applicant was not authorized BAH because of his dependent's relocation. Based on a preponderance of the evidence, the Board determined the debt the applicant incurred is not in error or unjust.

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 that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20220004588 on 1 June 2023.

4/1/2025

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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. Army Regulation (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.
2. Department of Defense 7000.14-R, Volume 7A, chapter 26 (Basic Allowance for Housing (BAH)), paragraph 2603 (Members with Dependents), a member who is entitled to basic pay is entitled to BAH at the rates prescribed for members with dependents when:

a. Adequate government quarters are not furnished for the member and dependents without payment of rental charge.

b. Adequate government quarters are not furnished for the member's dependents, or all of the member's dependents are prevented by competent authority from occupying such quarters, even though quarters are assigned for the member's occupancy.

c. Dependents are not enroute or do not accompany the member to the permanent duty station, or the vicinity thereof, so as to preclude assignment of family quarters. Under such circumstances, the mere availability of quarters which could have been assigned does not negate the right of a member to the BAH for dependents.

d. Certification of Dependents Status. Effective April 20, 1999, each member who is entitled to BAH on behalf of dependents must provide recertification to the Secretary concerned indicating the status of each dependent of the member to support entitlement to BAH on behalf of dependents upon arrival at a new Permanent Duty Station (PDS). If a member fails to provide the certification in a timely manner, stop BAH on behalf of dependents at the end of the month in which the certification is due, but continue to pay BAH at the appropriate partial or without-dependent rate unless the member is not entitled to that allowance for some other reason. Resume paying BAH at the with-dependent rate effective the date the member provides proper certification. Do not pay the higher rate retroactively in the absence of certification from the member's commander that the failure to recertify timely was for reasons beyond control of the member. After initial certification, Reserve Component members must recertify dependency status at least every third year from the previous certification or upon change in dependency status. Annual redetermination of dependency is required for members who claim BAH on behalf of:

- Parents, parents-in-law, stepparents, parents-by-adoption, or in-loco-parentis
- Students 21 and 22 years of age
- Incapacitated children over 21 years of age
- Ward of a court

3. Department of Defense Instruction 1340.24 (Family Separation Allowance), establishes policy, assigns responsibilities, and prescribes procedures for determining FSA eligibility. A Service member assigned to a PDS, either within or outside the continental United States, is entitled to monthly FSA payments when they are separated from their dependents due to military orders if:

- The transportation of dependents to or near the Service member's PDS is not authorized at Government expense and the dependents do not live at or near the Service member's PDS or home port

- The Service member is on temporary duty away from their PDS or home port for a continuous period of more than 30-days, and the dependents do not reside at or near the temporary duty location:
 - If a Service member can commute daily to the location of the dependents, then the Service member is considered to be at or near the temporary duty location
 - Reserve Component member, other than a member of the Active Guard/Reserve or an Reserve Component (RC) member activated for a period of a such duration that the activation results in a permanent change of station, the PDS may be considered to be the location from which the RC member is ordered to active duty or the RC member's place of entry to active duty

//NOTHING FOLLOWS//