

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 March 2025

DOCKET NUMBER: AR20240005017

APPLICANT REQUESTS:

- remission or cancellation of his indebtedness plus interest, fines and penalties
- correction of his credit report
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4187 (Personnel Action)
- Defense Joint Military. Pay System - Reserve Component (DJMS-RC) Leave and Earnings Statement (LES) history
- Headquarters (HQs), Charlie Company Conus Replacement Center, Memorandum, Subject: Debt Avoidance Counseling
- DD Form 214 (Certificate of Release or Discharged from Active Duty) service ending 29 August 2017
- Defense Finance and Accounting Service (DFAS) debt statement
- Navy Federal letter with bank statements

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 the debt should be removed from his records because he was not overpaid which can be verified by his bank statements. The debt was placed in error, when he cleared Fort Bliss, TX, he was informed by the debt avoidance counselor at the time of his discharge, he did not have a debt to the Government. The thought that DFAS corrected his debt after his initial contact with them but did not receive a response. Since DFAS ceased communication with him, he assumed the debt was resolved.

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

- a. On 29 January 2015, the applicant enlisted in the U.S. Army Reserve (USAR).
- b. On 13 April 2016, Orders Number BL-104-0108, issued by HQs, U.S. Army Garrison, Fort Bliss, the applicant was deployed in a temporary change of station status on or about 19 April 2016 in support of Operation Enduring Freedom Guantanamo Bay, Cuba not to exceed 352-days.
- c. DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 2 March 2016. He was discharged from active duty, effective 29 August 2017 with an under other than honorable conditions discharge in lieu of trial by court-martial. It also shows the applicant completed 1-year, 5-months, and 28-days of active service. Item 18 (Remarks) shows the applicant was mobilized in support of Operation Enduring Freedom during the period of 2 March 2016 through 5 April 2017 and for Uniform Code of Military Justice processing during the period of 6 April through 29 August 2017.
- d. On 29 August 2017, Orders Number 241-0502, issued by HQs, U.S. Army Garrison, Fort Bliss, the applicant was assigned to the U.S. Army transition point for discharge from active duty. The additional instructions stated he was not entitled to separation pay and the order did not affect his enlistment in the USAR.
- e. The applicant's service record is void of the court-martial and/or separation proceedings.

4. The applicant provides:

- a. DA Form 4187 dated 28 December 2016; the commander of the 422nd Military Police Company requested a 180-day involuntary foreign service tour extension of the applicant until 16 July 2017. The applicant was on a reassignment instruction for demobilization at Fort Bliss, TX that requires a new report date of 16 July 2017.
- b. DJMS-RC LES dated 5 July 2017 shows the applicant's debts as:
 - original debt for Service Member Group Life Insurance for the period of 22 June 2017 in the amount of \$29.00
 - original debt for basic pay for the period of 6 April through 28 May 2017 in the amount of \$3,879.07
 - original debt for pay and allowances for the period of 6 April through 28 May 2017 in the amount of \$3,167.89
 - a total of the unpaid debt in the amount of \$7,046.96

It also shows pay adjustments for:

- BAH without dependents in the amount of \$1,005.00 for the period of 6 through 30 April 2017
- BAH without dependents in the amount of \$1,125.60 for the period of 1 through 28 May 2017
- standard rate Basic Allowance for Sustenance – Enlisted (BAS-ENL) in the amount of \$343.73 for the period of 1 through 28 May 2017
- standard rate BAS-ENL in the amount of \$306.90 for the period of 6 through 30 April 2017
- basic pay in the amount of \$1,689.77 for the period of 6 through 30 April 2017
- basic pay in the amount of \$1,892.55 for the period of 1 through 28 May 2017
- ROTH refund in the amount of \$58.55 for 14 April 2017
- ROTH refund in the amount of \$87.83 for 1 May 2017
- ROTH refund in the amount of \$87.83 for 15 May 2017
- ROTH refund in the amount of \$76.12 for 1 June 2017
- imminent danger special pay in the amount of \$210.00 for the period of 1 through 28 May 2017 was collected
- hazardous duty special pay in the amount of \$83.33 for the period of 6 through 30 April 2017 was collected
- hazardous duty special pay in the amount of \$93.33 for the period of 1 through 28 May 2017 was collected

c. HQs, C Company Conus Replacement Center, Memorandum dated 22 August 2017, Subject: Debt Avoidance Counseling stated service member has no outstanding debts or bonuses which was handwritten.

d. DFAS indebtedness statement dated 1 September 2023 shows the applicant owes \$9,753.56. The debt of \$7,046.96 was to recoup pay and allowances for the period of 6 April through 28 May 2017 from the applicant's Reserve account as he was paid by the active duty component pay system beginning on 6 April 2017. He was not entitled to pay from both pay systems for the same period of time.

e. Navy Federal letter dated 7 March 2024 shows the institution provided the applicant bank statements for the period of 1 March through 1 August 2017 which shows the applicant's debits and credits on his banking account. These documents are available in the supporting documents for the Board's review.

5. On 19 February 2025, in the processing of this case, the Deputy Chief of Staff G1 provided an advisory opinion regarding his request for the removal of his debt for duplicate payments. The advisory official recommended disapproval of his request. The applicant received Leave and Earnings Statements (LES) from his Reserve pay for the months of April, May and June 2017 after his separation from the USAR. In July 2017,

he received a LES from his active Army pay, back paying him for active duty for the period of 8 April 2017 through the end of July 2017. He did not notice the duplicate payments on his bank statements because he was paid in July for the months of April, May, June and July from his active duty pay. Additionally, he received a LES from his Reserve pay dated 5 July 2017, which detailed the debts and the full amounts he was overpaid from his Reserve pay.

6. On 21 February 2025, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

7. On 22 February 2025, the applicant responded stating his extension documents stated he was to be extended in theater with the 422nd Military Police Company for the period of 17 January through 17 July 2017. He worked with another Reserve unit relieving the 422nd Military Police Company from Wisconsin during this period of time. The advisory opinion was not accurate in the statement he was not entitled to any active pay during this period of time. Additionally, for the same period of time, the Basic Allowance for Housing (BAH) was removed from his pay and was not paid for the entire deployment. He was told by the unit in theater and finance the large July payment was the correct backpay for not having received BAH previously, not the active duty backpay for the time he was not in an active unit. Ultimately, this would mean either the BAH he was entitled to for the period of 17 January through 17 July 2017 was never paid and he did receive an overpayment or the July payment he received was for the BAH owed to him and was not overpaid. If the Army chose to claim it was for an overpayment of normal duty and not BAH then the BAH was also missing and needs to be corrected. The requirement to recoup the debt with penalties will place a significant burden on him while not being paid as he should have been. It can be assumed the monies paid to him was for BAH backpay, otherwise he would not have been able to clear Fort Bliss with no debts or bonuses due by himself or the Army. He requests the Board to continue to investigate the missing BAH to allow the Army time to provide support as to why his BAH was terminated while he was still deployed and working in theater if the debt claim was upheld. The Board's assistance would help him since he no longer has reasonable access to a military finance office, his LESs and documents from that period of time.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings and recommendations outlined in the G1 advisory opinion and the lack of corroborating evidence to the applicant's submitted response to the G1 advisory opinion, the Board concluded there was insufficient evidence of an error or injustice warranting relief.

The Board noted the applicant's request for the Board to investigate the missing BAH, but the applicant is advised that the Board is a non-investigative body and will only evaluate documentation in the applicant's official military record, received advisory opinions, ex parte responses from the applicant of those advisory opinions and any documentation provided by the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//
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, 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. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 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.

3. 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 U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

4. Department of Defense Financial Management Regulation 7000.14-R, volume 7a, chapter 1 (Basic Pay) prescribes the criteria for determining creditable service for military members; provides examples for computing valid creditable service; states periods of service that are not creditable for pay purposes; cites conditions for the payment of military pay entitlements; explains the computation of leave and conditions for leave accrual; and provides for situations where enlistments are not valid. A member may not be employed in another capacity by the government and receive pay, other than the pay and allowances that accrue by reason of the military status.

5. Title 10 United States Code, section 802 (Persons Subject to this Chapter), (d) (1), a member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to an offense against this chapter may be ordered to active duty involuntarily for the purpose of:

- a preliminary hearing under section 832 of this title (article 32);
- trial by court-martial; or
- non-judicial punishment under section 815 of this title (article 15)

//NOTHING FOLLOWS//