

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2025

DOCKET NUMBER: AR20240005088

APPLICANT REQUESTS:

- Remission/cancellation of service debt and refund of all monies collected
- a personal appearance (video/telephonic)

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (DVA) letters
- Defense Finance and Accounting Service (DFAS) letter, 30 June 2014

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 in pertinent part that he was medically retired from military service. He contests that he was unaware of any debt incurred during his military service until his DVA disability compensation was initiated. He argues that it is unfair to notify him of this debt 10 years after he was retired from military service. He does not recall receiving any previous overpayments, but he does recall being advised that after he was medically retired, the military would continue to pay him until his DVA payments were initiated. He was never informed that these payments would need to be repaid. He believes that the payments were coded improperly because DFAS informed him that the payments were not coded as disability or retirement payments.
3. A review of the applicant's available service records reflects the following:
 - a. On 25 April 2007, the applicant enlisted in the Regular Army for 5 years.
 - b. On 14 October 2010, the applicant elected to extend his enlistment in the Regular Army by 15-months.

c. On 25 July 2011, the applicant reenlisted in the Regular Army for 6 years.

d. On 19 February 2014, Headquarters III Corps and Fort Hood issued Orders Number 050-0176 releasing the applicant from assignment and duty because of a physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability, retroactively effective 10 November 2013.

e. On 10 November 2013, the applicant was honorably discharged from active duty by reason of permanent disability.

4. The applicant provides the following a:

a. DVA letters, reflective of the applicant being advised of his disability compensation entitlements. He was further advised that payments would begin on the first day of the month following his effective date. He would receive a payment covering the initial amount due under this award, minus any withholdings.

b. DFAS letter dated 30 June 2014, reflective of the applicant being advised of an incurred debt (\$8,317.06) due to overpayment of mid-month and end-of-month payments received between 15 November 2013 – 15 February 2014.

5. On 5 December 2024, the Department of the Army, Deputy Chief of Staff, G-1, Financial Management Specialist, Military Pay Branch, provided an advisory opinion recommending denial of the applicant's request noting that DFAS Debts and Claims Office advised the applicant of the debt via letter on 30 June 2014, to his address of record. The applicant was informed that he was overpaid mid-month and end of month payments after his separation date of 10 November 2013 (\$8,317.00). Several attempts from DFAS and a collection agency to recoup the amount owed were unsuccessful. The income tax lien issued by the Treasury Department on behalf of the applicant refund includes additional fees the Treasury Department imposes to collect debts.

6. On 5 December 2024, the applicant was provided with a copy of the advisory opinion affording the applicant 15 days to provide comments. In response the applicant notes that upon his release from the military, his residence went through foreclosure, so he never received the notification letter. He again denies receipt of any overpayments and has confirmed with the DVA that there was no back payment of disability compensation entitlements disbursed. This debt is causing severe financial stress on both he and his family members. The applicant further provides a letter from the DVA dated 10 July 2024, reflective of his disability compensation payments received between 1 May 2014 - 30 November 2018.

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 available evidence, the findings outlined in the G1 advisory opinion and the lack of any rebuttal of the facts outlined in the G1 advisory opinion submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's pay record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

X **//SIGNED//**

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 (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. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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) 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//