

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240005090

APPLICANT REQUESTS: remission of debt associated with previously received Basic Allowance Housing (BAH), Cost of Living Allowance (COLA) and Family Separation Allowance (FSA).

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

- DD Form 149 (Application for Correction of Military Record)
- State of Hawaii Family Court Divorce Decree
- E-mail from Camp Buehring, Kuwait
- Headquarters (HQs), U. S. Army Garrison, Hawaii Orders Number 003-6601
- State of Hawaii Certificate of Marriage
- U. S. Army Human Resources Command (AHRC) Memorandum, Subject: Cost of Living Allowance (COLA) Secretarial Waiver
- HQs and HQs Battalion (BN) U. S. Army Garrison Memorandum, Subject: Det Remission Recommendation for Staff Sergeant (SSG) G-R (the applicant)
- U. S. AHRC Memorandum, Subject: Remission or Cancellation of Indebtedness – SSG G-R- (the applicant)

FACTS:

1. The applicant states he requests the remission of debt associated with previously received Basic Allowance Housing (BAH) and Family Separation Allowance (FSA). An injustice occurred on 14 April 2024 as his request for the remission or cancellation of his indebtedness was only partially approved for the amount of \$7,704.36 with the remaining balance of the debt in the amount of \$15,408.73. The error that caused the injustice was a debt which occurred during a hardship duty tour to Saudi Arabia during the period of 4 September 2022 through 30 August 2023 for an overpayment of BAH and COLA. The injustice is defined by the regulation, an example, BAH authorized and paid by a finance office, even though the Soldier is not entitled; or erroneous payment to a Soldier who receives the payment in good faith, and without fault, prior knowledge, or reason to suspect the error. This is an example of the exact description of this case as he followed the instructions of S1 representatives and servicing military pay office at Camp Buehring, Kuwait to receive entitlements. He received a Secretarial Waiver authorizing the entitlements from the U.S. AHRC. He received those payments in good

faith and used the entitlements to support his family. Upon in processing at Schofield Barracks, HI in October 2023 after completing the hardship duty tour, the Army Military Pay Office determined that he should not have been qualified for the Secretarial Waiver based on the type of custody that he had of his children. The pay office issued debt letters for the full amount despite the Secretarial waiver.

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

a. The applicant has prior enlisted U. S. Marine Corps service during the period of 17 November 1997 through 9 November 2001.

b. Enlisted Record Brief dated 25 November 2022 shows the applicant had one adult and two minor dependents with a divorced marital status. His mailing address was shown to be XXXX Waianae Uka Avenue, Wahlawā, HI 96786.

c. On 7 August 2002, the applicant was married in the State of Delaware (DE) to R-A-.

d. On 9 October 2002, R-R-, a male child was born in the State of DE to the applicant and his spouse.

e. On 5 July 2007, M-R-, a male child was born in the State of New Jersey (NJ) to the applicant and his spouse.

f. On 22 October 2009, the applicant enlisted in the Regular Army and had continuous service through extensions and reenlistments. He continue to serve.

g. On 6 July 2010, K-R-, a male child was born in the State of NJ to the applicant and his spouse.

h. On 30 January 2019, the applicant recertified his BAH authorization for his duty station at Schofield Barracks, HI as a married Soldier with dependents. His spouse and two minor children lived at zip code 96706. He certified that the dependency status of his primary dependents, on whose behalf he received BAH had not changed so as to affect his entitlement thereto for the period.

i. On 29 June 2022, Orders Number C1-180-017, issued by HQs, U. S. Army Garrison, Hawaii, the applicant was assigned to the Prince Sultan Airbase, Saudi Arabia effective 10 September 2022. The additional instructions stated this was a one year unaccompanied tour. If the spouse or dependents relocate at a different time than the Soldier, the Soldier may request BAH rate for the duty station to which reassigned, the former duty station the Soldier was assigned to if the location is different from where the spouse/dependents reside or where the spouse/dependents reside but only if the

spouse/dependents resided there before the Soldier departs for the new duty assignment. Dependent(s): No.

j. On 3 January 2023, Orders Number 003-6601, issued by HQs, U. S. Army Garrison, Hawaii, amended Orders Number C1-180-017 to reflect Dependent(s): Yes, travel of your family member(s) is not authorized to Saudi Arabia. Soldier elected for family member(s) to remain at designated location in HI 96706. The additional instructions listed the applicant's minor children.

k. On 16 August 2023, Orders Number 5714707, issued by the Department of the Army, the applicant was assigned to Schofield Barracks, Hawaii effective 10 October 2023. The additional instructions stated his spouse; M-R- and his three minor children were traveling concurrently and concurrent travel was authorized.

l. On 22 October 2024, the applicant stated his BAH authorization for his duty station at Schofield Barracks, HI. His spouse resided at zip code 96782 and two of his children resided at zip code 96706.

3. The applicant provides:

a. State of Hawaii Divorce Decree shows on 18 February 2021 the divorce of the applicant and R-R- was finalized. Joint custody was awarded with physical custody to his former spouse with a detailed visitation. The applicant was ordered to pay child support for his children to his former spouse.

b. E-mail from Camp Buehring, Kuwait dated 7 December 2022 which stated a DA Form 4187 (Personnel Action) was submitted is only requesting to receive HI COLA. His orders need to be amended to state that he has dependents, and the zip code needs to match the one being requested. The system shows that he has non-custodial children, a complete divorce decree was needed to verify whether he was entitled to FSA. In order to be entitled to FSA he needs to have proof that he had his children for 14 or more days out of the month. If he cannot prove this they are not entitled to FSA.

c. State of HI certificate of marriage shows the applicant married M-R- on 1 February 2023.

d. U. S. AHRC Memorandum dated 7 February 2023, Subject: COLA Secretarial Waiver – SSG R-G- stated effective 10 January 2023 his exception to policy (ETP) to continue to receive BAH and COLA for Schofield Barracks, HI due to his dependent restricted tour to Prince Sultan Air Base, Saudi Arabia was approved pursuant to Orders Number C1-180-017 dated 29 June 2022. The ETP was based on the Department of Defense Financial Management Regulation which allows COLA extension through the Secretarial process, after the Soldier departs his permanent duty station.

e. U. S. Army Garrisons, Memorandum dated 2 February 2024, Subject: Debt Remission Recommendation for SSG R-G- stated the commander recommended the remission of the applicant's debt in whole, in the amount of \$23,113.09 for the overpayment of BAH from 4 September 2022 through 31 January 2023 and COLA for the period of 4 September 2022 through 30 August 2023. The basis for the recommendation was for an injustice and a hardship. There was a misrepresentation on the part of the Government which was caused by person acting in their official capacity. The applicant followed the Secretarial process to receive a waiver authorizing BAH and COLA entitlements that were the subject of the debt. The repayment of the debt will impose a significant hardship to the applicant and his family.

f. U. S. AHRC Memorandum dated 15 April 2024, Subject: Remission or Cancellation of Indebtedness – SSG R-G- states the remission or cancellation of the applicant's indebtedness in the amount of \$23,113.09 was review and partially approved for \$7,704.36. The review determined no ground existed to remit or cancel the remaining portion based on hardship and/or injustice.

4. On 6 February 2025, in the processing of this case, the Deputy Chief of Staff G1 provided an advisory opinion regarding the applicant's request for remission of his indebtedness. The advisory official recommended disapproval of his request. U. S. AHRC partially approved his request by reducing his indebtedness of \$23,113.09 by \$7,704.36. He has over 20-years of service and should know the forms the Finance office needed for timely update when there were changes in his status. He should have questioned the receipt of COLA with dependents, knowing his children did not live with him full time, making him ineligible for this allowance. There is no evidence he sought assistance from his commander or senior enlisted noncommissioned officer to correct the error.

5. On 7 February 2025, the Army Review Boards Agency Case Management Division provided the applicant the advisory opinion for review and comment. The applicant has not responded.

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

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.

//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. 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 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.

2. Department of Defense 7000.14-R, Volume 7A, chapter 26 (Basic Allowance For Housing (BAH)), paragraph 2603 (Members with Dependents), a member 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

4. Department of Defense (DoD) 7000.14-R (Financial Management Regulation), a non-taxable allowance that offsets the higher prices of goods and services, excluding housing, in foreign countries, U.S. territories, Alaska, and Hawaii. OCONUS COLA equalizes purchasing power so that a Service member can purchase the same level of goods and services OCONUS as he or she could if stationed inside the continental United States (CONUS). In addition to OCONUS COLA, station allowances in Chapter 68 include the Temporary Lodging Allowance (TLA). The TLA partially offsets the cost of lodging and meals and incidental expenses incurred while occupying temporary lodgings OCONUS.

a. Paragraph 680201a, the “vicinity” is the entire country, U.S. territory or possession, or state when in Alaska or Hawaii where the Service member’s permanent duty station (PDS) is located. When a Service member resides with a dependent and commutes to the PDS, the dependent is considered to be residing at or in the vicinity of the PDS even if in an adjacent country or state. If the Service member transfers to a new PDS in the same country, state, or U.S. territory or possession as the designated place, and the Service member is required to maintain two separate households (for example, the Service member cannot commute daily from the dependent’s location to the PDS), then a second station allowance may be authorized or approved through the Secretarial Process. In this case, the dependent is not considered at or in the vicinity of the Service member’s PDS even though located in the same country, state, or U.S. territory or possession.

b. Paragraph 680202b, unaccompanied Tour and “Unusually Arduous Sea Duty.” When a Service member is assigned to an unaccompanied tour or “unusually arduous sea duty” and a dependent remains at the Service member’s old PDS OCONUS or is at an approved designated place OCONUS, then the Service member is not considered to have a dependent at the unaccompanied or sea-duty PDS. The Service member is

eligible for OCONUS COLA or TLA at the with-dependent rate for the dependent's location.

c. Paragraph 680203d (2), payment of Allowances to Service Member at Unaccompanied Tour or "Unusually Arduous Sea Duty" Station. While a Service member is authorized station allowances for a dependent's location, the Service member is also authorized the OCONUS COLA and TLA, if any, at the "without dependent" rate at the new PDS.

d. Paragraph 680203d (3), subsequent Reassignment to an Accompanied Tour Area. Upon a subsequent PCS order to an accompanied tour area to which dependent transportation is authorized, OCONUS COLA and TLA stop the day before the Service member departs due to the PCS order or the day before the effective date of the home port change from OCONUS. See paragraph 680302 for OCONUS COLA exceptions.

e. Paragraph 680301f (1), requests to authorize a new COLA Unique Expense must be submitted through the Major Command level, then to OUSD-PR through the applicable Service representative. OUSD-PR does not accept requests from individual service members for COLA Unique Expense authorization. The Secretary concerned may reimburse a COLA Unique Expense if Table 68-2 authorizes the location and expense. Alternatively, the expense may be reimbursed at the Service's discretion through the Secretarial Process. The Service concerned is not required to recover any amount refunded to a Service member by a foreign government agency involved. For a Service member to be reimbursed, the expense must be verified by a valid receipt. The expense must meet all of the following criteria to be authorized as a "COLA Unique Expense":

f. Paragraph 680401 TLA Authority, the senior commander of the Service in the country or area is the TLA Authority. In countries or areas where more than one Service is represented, the senior commander of all of the Services is the TLA Authority. The TLA Authority may delegate authority as determined appropriate to judiciously administer TLA. TLA may be authorized when a Service member or dependent needs to occupy temporary lodging at personal expense. The TLA Authority authorizes or approves TLA only for the number of days needed to prevent undue financial hardship to the Service member during that period.

g. Paragraph 680404e Unaccompanied Tour, a Service member serving an unaccompanied tour is not authorized TLA when he or she chooses not to use an available Government dining facility or available Government quarters because a non-command sponsored dependent is in the PDS vicinity.

//NOTHING FOLLOWS//