

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240005300

APPLICANT REQUESTS: cancellation of his indebtedness associated with previously received Basic Allowance for Housing (BAH).

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

- DD Form 149 (Application for Correction of Military Record)
- District Court of El Paso County Decree of Dissolution of Marriage
- District Court of El Paso County Interim Orders on Motion to Relocate
- District Court of El Paso County Support Order
- DA Form 3508 (Application for Remission or Cancellation of Indebtedness)
- Memorandum; Subject: Injustice Dispute of BAH/Basic Allowance for Subsistence (BAS) Payment 1 April - 31 December 2021
- Memorandum; Subject: Facts surrounding [applicant] During My Time as His Platoon Leader
- Memorandum; Subject: Request for Remission of BAH Debt
- DA Form 2823 (Sworn Statement)
- Memorandum; Subject: Remission or Cancellation of Indebtedness – [Applicant]
- Exhibit A - Income/Expenses

FACTS:

1. The applicant states, in part, he sought guidance from and filed the correct documentation with the proper authorities and entities. He should not be held liable for being provided incorrect information. He was directed to continue to receive BAH (at the with dependent rate) and BAS. Additionally, this situation is creating a serious financial hardship for him as he is repaying this debt at a rate of \$1,619.50 per month. Furthermore, this situation has created a serious disdain regarding his continued service in the U.S. Army. He is unsure of committing any more of his life to the Army after being treated in this manner. He is treated as if he were intentionally stealing money from the government when he was simply following directions. He should not be held financially liable for being misled and incorrectly informed by the authoritative figures that provide direction on such issues. He was not aware of the Army policy stating that child support is to be paid monthly; he understands that his unawareness of that policy does not necessarily constitute innocence, however he was doing what was

in the best interest of his child. He submitted a remission packet based on injustice to the Fort Drum Army Military Pay Office in August of 2023. In January of 2024 he received a decision; they removed \$5,530.90 from the overall debt. This left me with a balance due of \$22,123.60.

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

a. He enlisted in the Regular Army on 9 January 2017 and continued service through extensions and reenlistments.

b. His Enlisted Record Brief (ERB) dated 21 November 2022 shows in Section IV (Personal/Family Data):

- No. of Dependent: 0 Adults/2 Children
- Marital Status: Divorced

c. Orders Number 0004466887.00 issued by Department of the Army ordered him on a permanent change of station from Fort Carson, CO to Fort Drum, NY with a report date of 13 April 2023.

d. He remains in the Regular Army.

e. His record is void of DA Form 5960 (Authorization to Start, Stop, or Change Basic Allowance for Quarters (BAQ) and/or Variable Housing Allowance (VHA)) showing his elected BAH certification. Likewise, it is void of his divorce decree.

3. The applicant provides:

a. District Court of El Paso County Decree of Dissolution of Marriage that dissolved the marriage between him and [REDACTED] on 1 April 2021.

b. District Court of El Paso County Interim Orders on Motion to Relocate dated 30 July 2021 that amended their child support and location agreement, due to the applicant deploying for approximately 9 months in July or August of 2021 and the child's mother relocating to North Carolina.

c. District Court of El Paso County Support Order dated 17 August 2022, in which he was ordered to pay child support for his dependent daughter in the amount of \$675.00 monthly, provide medical, dental, and vision health insurance coverage.

d. DA Form 3508 dated 21 August 2023, in which the applicant requested cancellation of his debt in the amount of \$27,654.50 for overpayment of BAH and BAS that he was notified of on 28 July 2023.

e. Memorandum; Subject: Injustice Dispute of BAH/BAS Payment 1 April - 31 December 2021, dated 14 August 2023, in which the applicant states:

(1) He was divorced as of 1 April 2021 and at the time he was a sergeant (E-5). He was promoted to staff sergeant (E-6) on 1 January 2022.

(2) His platoon sergeant and platoon leader were well aware and informed of his situation and offered continuous assistance.

(3) Days following his divorce being finalized (after receiving the final divorce decree) he provided his S-1 with the divorce decree and memorandum of understanding parenting agreement. The officials in the S-1 removed his ex-wife and kept his daughter on his Defense Enrollment Eligibility Reporting System (DEERS) enrollment. He completed a DA Form 5960. The S-1 representatives received his documentation and instructed him to follow-up in one to two weeks.

(4) After a week or so he returned to the S-1 office, as directed. He was informed that he would continue to receive BAH at the with dependent rate, as well as BAS, because he has a dependent child. He then returned to his office and informed his platoon leadership.

(5) A month later he noticed that the BAH block on his leave and earnings statement (LES) was annotated as "married." He informed his platoon sergeant and was instructed to go back to the S-1. The S-1 informed him that his LES will continue to read "married" due to the type of BAH he was receiving.

f. Memorandum; Subject: Facts surrounding [applicant] during my time as his Platoon Leader, dated 15 August 2023, that states:

(1) [The applicant] let the chain of command know that he was getting divorced and kept updating everyone throughout the process.

(2) After his divorce was finalized, he submitted the necessary paperwork to S-1 in order to change his marital status. S-1 changed the status to single but informed him and the chain of command that he still would be receiving BAH at the with dependent rate. This is due to him having a daughter who is his legal dependent.

g. Memorandum; Subject: Request for Remission of BAH Debt, dated 23 August 2023, and endorsed by the Bravo Troop, 3rd Squadron, 71st Cavalry Regiment commander states:

(1) The Soldier listed below has brought to our attention that he is facing a debt of approximately \$27,000.00 for BAH payments, despite following the guidance of the S-1 shop at his unit at his previous duty station.

(2) In light of the attached memoranda documenting [the applicant's] previous leadership's contemptuous understanding of his situation, I recommend approval of his debt remission application.

h. DA Form 2823 dated 21 August 2023, sworn and subscribed by the applicant, reiterates everything he mentioned in his memorandum; Subject: Injustice Dispute of BAH/BAS Payment 1 April - 31 December 2021, dated 14 August 2023.

i. Memorandum; Subject: Remission or Cancellation of Indebtedness – [Applicant], dated 12 January 2024, authored by the U.S. Army Human Resources Command (AHRC), Director, Military Pay Division states:

(1) The application for remission or cancellation of indebtedness for [applicant] in the amount of \$27,654.50 has been reviewed and is partially approved for \$5,530.90. The review determined no grounds exist to remit or cancel the remaining portion based on hardship and/or injustice.

(2) The Soldier can apply to the Army Board for Correction of Military Records (ABCMR) for further review if they feel an injustice occurred. Guidance for this process can be found in Army Regulation (AR)15-185 (ABCMR). This response does not imply that an error or injustice occurred. Neither will mere submission of the request guarantee a formal hearing or result in any favorable action taken. Each case is considered on the evidentiary information provided with the final determination based on the merits of the individual case.

j. A document titled "Exhibit A - Income/Expenses" that details the applicant's monthly income and allowances, along with his monthly expenses and deductions. It shows monthly he brings in \$6,087.05 and monthly expenses total \$5,664.00.

k. A Release of Information coversheet from the applicant requesting assistance from the Second Congressional District of New Hampshire, dated 27 March 2024.

l. A letter from a member of Congress dated 3 April 2024, requesting assistance in regard to the applicant's Release of Information.

m. Email correspondence between the applicant's congressional representative and the Army Review Boards Agency (ARBA) in reference to the status of the applicant's case with ARBA.

4. On 9 December 2024, in the processing of this case, a Financial Management Specialist, Military Pay Branch, Office of the Deputy Chief of Staff, provided an advisory opinion pertaining to the cancellation of BAH Debt.

a. We recommend the Board approve the applicant's request for administrative relief to cancel his BAH debt in the amount of \$27,654.50 and that he is refunded any payments he has made.

b. The applicant provided copies of his bank statements proving that he paid his child support payments to his ex-spouse in accordance with the divorce decree from April 2021 to current. In August 2023, he started an allotment to continue the payments. The BAH at the with-dependent rate should not have been collected. Since he was assigned to the barracks, he was entitled to receive BAH-Difference which is the same amount of pay he is due.

5. On 10 December 2024, the applicant was provided with a copy of the advisory opinion for comment or rebuttal.

6. On 19 December 2024, the applicant responded via email and stated:

a. He has received the ABCMR correspondence in the mail with the Department of Defense Finance Department's recommendation to the Board. He would like to clarify the amount of pay that he has lost due to repayment of the BAH debt thus far.

b. Repayment of this debt began in February 2024 at a rate of \$1,579.57 and interest of \$39.93 per month. By end of month December 2024 this will total a repayment of \$17,812.50.

c. He has attached his LES from February to November 2024 (as December was not yet available at the time of his response).

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition, and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition, available military records, and recommendation from the Deputy Chief of Staff, G-1, the Board concurred with the G-1 advisory finding the applicant provided copies of his bank statements proving that he paid his child support payments to his ex-spouse in accordance with the divorce decree from April 2021 to current and subsequently started an allotment to continue payments. The Board majority concluded the BAH at the with-dependent rate should not have been collected

and determined relief was warranted. The Board minority determined there was insufficient evidence to support granting relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:XX	:	:XX	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:XX	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by cancelling collection of debt related to the applicant's basic allowance for housing and refunding any monies already recouped.



X //signed//

CHAIRPERSON
Signed by:

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. 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 Financial Management Regulation 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. 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

//NOTHING FOLLOWS//