

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240005561

APPLICANT REQUESTS: remission/cancelation of indebtedness for overpayment of pay and allowances in the amount of \$154,595.49 and removal of all mention of indebtedness from her service records.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief from counsel
- The [REDACTED] Office of the City Clerk Certificate of Marriage Registration
- DA Form 4980-18 (Army Achievement Medal Certificate)
- 30th Medical Brigade Certificate of Achievement
- DA Form 5691-R (Request for Reserve Component Assignment Orders)
- Written Agreement – U.S. Army Reserve (USAR) Enlisted Affiliation Bonus Acknowledgement Addendum
- DA Form 4980-14 (Army Commendation Medal Certificate) with DA Form 638 (Recommendation for Award)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- District Court 256th Judicial Court Agreed Final Decree of Divorce
- Four Defense Finance and Accounting Service (DFAS) Letters, 21 March 2018, 23 April 2018, 15 September 2023, and 30 January 2024
- [REDACTED] Driver License
- [REDACTED] (LLC) letter
- Department of Veterans Affairs (VA) Letter
- Enlisted Record Brief
- Medical Records

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, through counsel, she enlisted in the U.S. Army on

17 September 2012. Shortly thereafter she married her second husband with whom she was married through her enlisted active duty service. When she was assigned to serve in Korea for a 1-year unaccompanied tour, her husband remained in the Continental United States and resided in [REDACTED]. Therefore, she received Basic Allowance for Housing (BAH) with dependents at the [REDACTED] rate. While she served in Korea, she was sexually assaulted by an officer, which she did not report out of fear of retaliation.

- a. She was then assigned to serve in Germany in December 2014 and her husband remained in [REDACTED]. While in Germany she sustained a head injury on 11 April 2016 and suffered from headaches, blurred vision, eye pain and sleep disturbances and was diagnosed with a concussion and was referred to the Traumatic Brain Injury (TBI) clinic for evaluation. Over time, her symptoms worsened and included difficulty concentrating, memory loss, mood changes, depression, irritability, and anger. On 20 June 2016, she was diagnosed with TBI and was referred to the behavioral health for treatment.
- b. In the fall of 2016, she asked her husband for a divorce, and he moved to [REDACTED] [REDACTED] without telling her of his location. He then filed a complaint with the Department of the Army Inspector General that she was committing fraud by receiving BAH at the [REDACTED] rate when he lived elsewhere. At no time, did he make her aware that he no longer lived in [REDACTED]. Due to the complaint, in October 2016 an investigation was initiated by the Criminal Investigation Division (CID) regarding the allegation of BAH fraud. When she was interviewed by CID, she did not understand the nature of the allegations and no action was taken against her following the investigation and she was not informed of a potential debt owed to the U.S. Government. She was honorably released from active duty on 1 January 2017 and assigned to the USAR where she served another 6-years and was discharged on 7 January 2023.
- c. After her release from active duty, she received treatment from the VA and in 2022 she was found to be 100 percent totally and permanently disabled with TBI and Post Traumatic Stress Disorder (PTSD). On 21 March 2018, she was notified by DFAS of her indebtedness in the amount of \$154,457.87 due to an overpayment of military pay and allowances for which no entitlement existed. On 23 April 2018, she received a final notice of indebtedness reflecting the amount of \$154,595.49. Throughout her service in the USAR, her pay was withheld and applied to the debt. On 30 January 2024, she was notified by DFAS, her indebtedness was in the amount of \$142,590.69 which indicated the debt was due to an overpayment of military pay and allowances related to an entitlement during the period of 20 May through 10 June 2019 for discount meal rate.
- d. The alleged indebtedness that was imposed on her is legally insufficient because she was not provided a meaningful opportunity to respond to the allegations against her before imposing the debt and there was no factual or legal basis for a finding of BAH fraud. The fifth amendment of the U.S. Constitution states no person shall be deprived

of life, liberty, or property without due process of law. Thus, before depriving her of more than \$150,000.00, she must be afforded due process of law. The U.S. Army Court of Criminal Appeals clarifies the concept of a basic fairness, and procedural due processes were violated by not providing her a copy of the recommended action and an opportunity to comment before providing a recommendation to the convening authority for action. Furthermore, throughout the investigation, she was suffering from PTSD, confusion, memory loss, and difficulty concentrating due to a TBI that affected her cognitive abilities. Her command was aware of her medical condition and mental status and they still sent her to CID without assistance to answer questions knowing her cognitive abilities were compromised and English as her second language, left her with an extreme difficulty to understand the nature of the investigation. This is a clear violation of her constitutional due process rights. Due to this the matter of imposing a debt of more than \$150,000.00 is legally insufficient, constituting a material error and warrants correction.

e. In order to find she committed fraud, there must be a finding she submitted a claim for BAH at the [redacted] rate knowing her husband did not reside in [redacted], thereby knowing the claim to be false or fraudulent. If her husband did in fact move out of the state of [redacted] he did so without notifying her. Therefore, she did not commit fraud. It is clear, her husband clearly attempted to create a situation to get her into trouble and ruin her career after she asked him for a divorce. Therefore, there can be no finding she committed BAH fraud and the alleged debt resulting from the allegation cannot be substantiated is legally insufficient and materially erroneous.

f. Moreover, imposing a debt of more than \$150,000.00 creates a significant financial hardship on her, as she has service connected disabilities with the inability to work, put great limitations on her income. She relies on her VA disability compensation to cover the cost of her medical expenses as well as her other living expenses. The requirement of recoupment of the indebtedness leaves her without sufficient funds to cover the cost of her living expenses. If it should be found the debt to be valid, the collection of the debt would not only go against equity and good conscience, but it would not be in the best interest of the United States as it does not reflect the care and appreciation of our veterans.

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

- a. On 17 September 2012, the applicant enlisted in the Regular Army, and she had continuous service through extensions and reenlistments.
- b. Enlisted Record Brief dated 2 January 2017 shows the applicant is married with one dependent. It also shows the applicant served in:

- Korea during the period of 28 May 2013 through 11 December 2014

- Germany during the period of 12 December 2014 through date of separation
 - c. On 7 November 2012, Orders Number 312-398, issued by Headquarters (HQs), U.S. Army Garrison, Fort Sill, the applicant was assigned to Fort Sam Houston, TX, effective 2 December 2012 and may proceed on or about 1 December 2012.
 - d. On 3 December 2012, the applicant recertified her BAH as without dependent at Fort Sam Houston, TX, and her marital status was divorced.
 - e. The City [REDACTED] of the City Clerk Certificate of Marriage Registration shows the applicant was married on 28 December 2012 to [REDACTED] who resided in [REDACTED]
 - f. On 9 April 2013, Orders Number 099-217, issued by HQs, U.S. Army North (Fifth Army) Military Personnel Division, the applicant was assigned to Korea on or about 10 June 2013. The additional instructions stated she had dependents, and she would serve a 12-month dependent restricted tour and her family would reside in [REDACTED]
 - g. DA Form 5960 dated 21 May 2013 shows the applicant recertified her authorization for BAH at the with dependents rate with duty location at Fort Sam Houston, TX and her dependent resided in [REDACTED]
 - h. The applicant's service record is void of evidence of her reassignment to Germany.
 - i. On 6 July 2016, Orders Number 188-0002, issued by Installation Management Command - Europe Kaiserslautern Transition Center, the applicant was reassigned to the U.S. Army Transition Point for transition processing for release from active duty on 1 January 2017. She was assigned to the Rheinland-Pfalz Transition Center, Germany. The additional instruction shows concurrent travel with no command sponsored family members.
 - j. On 11 August 2016, a request for Reserve component assignment orders was submitted for the applicant's transition to the USAR on 1 January 2017 for assignment to Seagoville, TX.
 - k. DA Form 3540-R (Certificate and Acknowledgement of USAR Service Requirements and Methods of Fulfillment) shows in connection with her membership in the USAR Selected Reserve, she completed a written agreement for a USAR Enlisted Affiliation Bonus on 11 August 2016.

I. Enlisted Affiliation Bonus Addendum shows as a prior service Active component Soldier she was assigned to the USAR Selected Reserve for a 3-years enlistment and was entitled to a \$5,000.00 Enlisted Affiliation Bonus.

m. On 1 January 2017, the applicant was honorably released from active duty and assigned to a USAR Troop Program Unit in Seagoville, TX. DD Form 214 shows the applicant completed 4-years, 3-months, and 15-days of active service.

n. On 8 February 2018, the District Court, 256th Judicial District, Dallas, TX, issued a final decree of the applicant's divorce dissolving her marriage.

o. DA Form 5960 dated 4 May 2019 shows the applicant started her authorization for BAH at the without dependent rate with duty location in Dallas, TX.

p. DA Form 5960 dated 9 January 2021 shows the applicant started her authorization for BAH at the without dependent rate with duty location in Dallas, TX.

q. DA Form 5960 dated 22 January 2022 shows the applicant completed an authorization for BAH at the without dependent rate with duty location in Seagoville, TX.

r. On 8 February 2023, Orders Number 3991899, issued by the Department of the Army, the applicant was discharged from the USAR, effective 8 January 2023.

4. The applicant provides:

a. DA Form 4980-18 which shows the applicant was awarded the Army Achievement Medal for exceptionally meritorious achievement during the period of 17 May through 6 June 2015 as awarded by 30th Medical Brigade, Sembach, Germany, Permanent Orders Number 152-29.

b. 30th Medical Brigade Certificate of Achievement recognized the applicant's meritorious achievement during the Medical Shock Exercise during the period of 23 through 29 January 2016.

c. DA Form 4980-14 which shows the applicant was awarded the Army Commendation Medal for exceptionally meritorious achievement during the period of 10 December 2014 through 1 January 2017 as awarded by 30th Medical Brigade, Sembach, Germany Permanent Orders Number 188-01.

d. DFAS letter dated 21 March 2018 notified the applicant she was indebted to the Department of Defense in the amount of \$154,457.87 due to overpayment of military pay and allowances for which no entitlement existed per a Criminal Investigation Division (CID) Law Enforcement Report [REDACTED]

e. DFAS letter dated 23 April 2018 notified the applicant she was indebted to the Department of Defense for the amount of \$154,595.49 due to overpayment of military pay and allowances for which no entitlement existed per a CID Law Enforcement Report [REDACTED]

f. [REDACTED] Driver License shows the applicant's address was in [REDACTED]

g. [REDACTED] LLC letter dated 2 August 2023 for a privacy act request and release authorization on behalf of the applicant for personnel and financial records for the period of September 2012 to present for full accounting report of her indebtedness to DFAS which alleges she owed a debt in the amount of \$154,595.49.

h. DFAS letter dated 15 September 2023 in response to the request for the release of the applicant's personnel and finance records to inform them DFAS did not maintain military personnel records and recommended to contact the U.S. Army Human Resources Command. The financial records were released in full for all available records.

i. DFAS letter dated 30 January 2024 notified the applicant she was indebted to the Department of Defense for restitution in the amount of \$142,590.69 due to overpayment of military pay and allowances related entitlement for the period of 20 May through 10 June 2019. This entitlement was discount meal rate. The debt was due to a deduction on her Reserve pay record unrelated to pay and allowance entitlement. Her debt was for prior service OPA (unknown acronym) debt.

j. VA letter dated 14 February 2024 which shows a summary of benefits from the VA for a 100 percent service connected disability. She was found to be totally and permanently disabled, effective 3 July 2022.

k. Forty-one pages of medical records available for the Board's review.

5. On 15 October 2024, in the processing of this case, the CID provided a redacted Department of the Army CID report in which the applicant was the subject of the investigation. The CID report shows on the DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) the applicant was listed as the offender of the offenses of:

- Larceny of Government Funds which occurred on or about 28 December 2012
- Pay and Allowance (Fraud – make/present/using/forgery/false document) which occurred on or about 28 December 2012
- Failure to Obey Lawful Order General Regulation which occurred on or about 28 December 2012

6. The applicant's commander made the decision on 31 January 2017 to take no action or suspend any sanctions as the CID investigation was completed a day prior to her expiration of term of service and there was insufficient time to process an action.
7. The CID received a request for an investigation on or about 20 October 2016 which detailed a BAH fraud committed by the applicant. The investigation revealed the incident of fraud was reported by her husband to the Department of the Army Inspector General hotline where the applicant had committed BAH fraud when she received BAH at the [REDACTED] rate when he lived elsewhere. He also reported the applicant did not provide him financial support while she was stationed in Germany. Furthermore, he reported the applicant told him not to divulge to anyone that he did not live [REDACTED]. During the investigation the applicant was interviewed, and she stated she received BAH for [REDACTED] when she knew her husband did not live there and that she did not pay for her husband's housing. She used the BAH to pay the mortgage on her residence in [REDACTED] where her husband never lived. During the legal coordination, for purposes of fingerprint card submission, Combined DNA (deoxyribonucleic acid) Index System sample submission and indexing, on 27 December 2016, it was opined there was probable cause to believe the applicant committed the offenses of failure to obey a lawful order, larceny of government funds and fraud for a total loss to the U. S. Government in the amount of \$154,457.87.
8. On 17 October 2024, the Army Review Boards Agency (ARBA), Case Management Division, provided the applicant, through counsel, the CID report for review and comment. The applicant has not responded.
9. On 7 October 2024, in the processing of this case, the DFAS responded to a request for information regarding any DFAS indebtedness stating the DFAS retired pay does not have any information or documentation on the applicant. Then on 23 October 2024, the DFAS provided additional information stating Defense Debt Management System (DDMS) shows the applicant has an original debt in the amount of \$142,590.69 plus interest, penalties, administrative fees in the amount of \$2,899.75 for a total of \$145,490.44. DFAS received \$1,000.00 towards the debt for a current balance of \$144,490.44. There is not documentation regarding the indebtedness in the DDMS. However, the debt is reported as overpayment of military pay and allowances entitlement during the period of 20 May through 10 June 2019. The entitlement was for discount meal rate which was reported as a prior service debt.
10. On 24 October 2024, in the processing of this case, the Deputy Chief of Staff G1 provided an advisory opinion regarding the applicant's request for the remission or cancellation of her indebtedness and removal of any mention of the debt from her service record. The advisory official stated after the review of her records, it could not be determined why the finance office collected the full amount of her BAH with dependents. It is recommended the Board approve her request for an administrative

relief of the debt in the amount of \$154,457.87. The applicant's military record shows she received the correct BAH with dependent rate based on her husband's location in [REDACTED] during her assignment to Korea. For the period of her assignment to Germany, she received the correct BAH rate for her husband's location in [REDACTED]. Her supporting finance office incorrectly collected the full amount of BAH based on her marriage during the period of 28 December 2012 through 30 September 2016 in the amount of \$154,457.87.

11. On 28 October 2024, the ARBA, Case Management Division, provided the applicant through counsel, the Deputy Chief of Staff G1 advisory opinion for review and comment. The applicant has not responded.

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 available military records and Deputy Chief of Staff G1 advising official, the Board found insufficient evidence to support the debt collected of \$154,457.87 and therefore the debt should be remitted and removed from the applicant's record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|--------------------------|--------------------------|--------------------------|----------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| : | : | : | 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 notifying DFAS that the applicant's debt for BAH has been relieved and that she is entitled to repayment of the collected debt.

3/25/2025

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) 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.
3. 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 without-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

4. AR 190-45 (Law Enforcement Reporting) establishes policies and procedures for offense and serious incident reporting within the Army; for reporting to the Department of Defense and the Department of Justice, as appropriate; and for participating in the Federal Bureau of Investigation's NCIC, the Department of Justice's Criminal Justice Information System, the National Law Enforcement Telecommunications System, and State criminal justice systems. Paragraph 3-6 (Amendment of Records) provides that amendment of records is appropriate when such records are established as being inaccurate, irrelevant, untimely, or incomplete.

a. Amendment procedures are not intended to permit challenging an event that actually occurred. Requests to amend reports will be granted only if the individual submits new, relevant, and material facts that are determined to warrant their inclusion in or revision of the police report. The burden of proof is on the individual to substantiate the request.

b. Requests to delete a person's name from the title block will be granted only if it is determined that there is not probable cause to believe that the individual committed the offense for which he or she is listed as a subject. It is emphasized that the decision to list a person's name in the title block of a police report is an investigative determination that is independent of whether or not subsequent judicial, nonjudicial, or administrative action is taken against the individual. In compliance with DOD policy, an individual will still remain entered in the Defense Clearance Investigations Index to track all reports of investigation.

//NOTHING FOLLOWS//