

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 January 2025

DOCKET NUMBER: AR20240005656

APPLICANT REQUESTS: remission or cancellation of indebtedness.

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

DD Form 149 (Application for Correction of Military Record), with self-authored statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he has a substantial debt that was referred to the Internal Revenue Service (IRS) by the Defense Finance and Accounting Service (DFAS) upon his discharge from active duty in 2011. The IRS has been garnishing his and his wife's taxes for the last two years. He has no information about why they have endured these deductions. He believes it may be in relation to Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS). However, he was granted BAH and BAS by his unit as he had a family and maintained living quarters off post.
3. The applicant enlisted in the Regular Army on 17 July 1997, for a 4-year period. Upon completion of initial entry training, he was awarded military occupational specialty 88M (Motor Transport Operator). The highest rank he attained was sergeant/E-5.
4. He reenlisted in the Regular Army on 9 June 2001 and served in Iraq from 7 September 2003 to 19 September 2004, 16 November 2005 to 14 November 2006, and 15 June 2008 to 16 June 2009.
5. A DA Form 4991-R (Declination of Continued Service Statement), dated 20 November 2009 shows the applicant was advised of his service-remaining requirement to comply with operational commitments. The applicant refused to take the necessary action to meet his length of service requirements. He was counseled

accordingly and acknowledged understanding the effects his refusal would have on his Army career, to include being ineligible for separation pay.

6. On 19 February 2010, the applicant voluntarily extended his enlistment for a 15 month period.

7. The applicant served in Afghanistan from 19 June 2010 to 16 June 2011

8. Prior to his discharge from active duty, the applicant requested Reserve Component assignment orders and enlisted in the U.S. Army Reserve (USAR) for a 6-year term of service.

9. The applicant was honorably discharged from active duty and transferred to the USAR on 27 October 2011, under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 4, by reason of completion of required active service. He completed 14 years, 3 months, and 11 days of net active service. Item 18 (Remarks) includes the statement "Not eligible for separation pay; signed Declination for Continued Service, DA Form 4991-R." He was awarded or authorized the following:

- Afghanistan Campaign Medal with one campaign star
- Iraq Campaign Medal with four campaign stars
- Army Commendation Medal
- Meritorious Unit Commendation
- Army Good Conduct Medal (3rd award)
- National Defense Service Medal
- Global War on Terrorism Expeditionary Medal
- Global War on Terrorism Service Medal
- Korean Defense Service Medal
- Army Service Ribbon
- Overseas Service Ribbon (5th award)
- North Atlantic Treaty Organization Medal
- Driver and Mechanic Badge with Mechanic bar

10. The applicant was transferred from the USAR to the Retired Reserve on 5 January 2018, by reason of completion of 20 or more years of qualifying service for retired pay at age 60.

11. In the processing of this case, the Army Review Boards Agency (ARBA) received the following information from DFAS, Debt and Claims Management Office on 18 November 2024:

a. A letter of indebtedness and account balance information was sent to the applicant from DFAS on 14 June 2018. The letter provided instructions to the applicant on how to resolve his debt with DFAS Debt Collection Management Office. The attached account statement showed the total debt was \$40,139.61 for prior service active component separation pay (\$39,648.58), discount meal collection on 17 April 2013 and 27 July 2014, and Servicemembers Group Life Insurance for the periods March 2017 to April 2017 and June 2017 to January 2018.

b. The DFAS Master Record Remarks page shows the applicant called DFAS on 17 September 2018 and 29 March 2023. On both occasions he was advised of the debt reasons. He was also advised to make payments while disputing the debt.

c. Additional pages in the Master Record include the debt reason information and referral to collections.

12. On or about 11 December 2024, ARBA received an advisory opinion from the Department of the Army, Deputy Chief of Staff G-1, Military Pay Branch, which recommended the Board disapprove the applicant's request for administrative relief to cancel his debt. DFAS advised the applicant of the debt in 2018. The applicant spoke with DFAS officials in 2018 and 2023 regarding actions required to dispute the debt. He was also advised to make payments during the dispute process. DFAS has no record of the applicant filing a dispute or making payments. Recoupment efforts from DFAS and a collection agency were unsuccessful, before DFAS transferred the debt to the Treasury Department. The garnishment issued by the Treasury Department includes additional fees the Treasury Department imposes to collect debts.

13. A copy of the advisory opinion was provided to the applicant for his review and comments. In a response, dated 23 December 2024, the applicant states all sources have pointed back to a unit debt that does not exist anymore. He cannot find any information on the accumulated debt. He was allotted BAH with dependents and BAS during his time in service. This debt has been hanging over his head for 13 years with no explanation. He is requesting the debt be nullified based upon "no cause for recoupment of funds." There is no detailed proof of the debt, and he has learned of no documents which prove what it is for. His family is having money seized by a government he honorably served. If there is just cause for the debt, then he will pay it. If not, he asks the Treasury to cease causing his family this hardship.

BOARD DISCUSSION:

1. 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 and standard review based on law, policy and regulation. One potential outcome was to concur with the advising official for disapproval of remission of debt. However, upon review of the applicant's petition, available military records and the Department of the Army, Deputy Chief of Staff, G-1 Military Pay Branch advisory opinion, the Board majority found sufficient basis to grant relief for remission or cancellation of the applicant's indebtedness, notwithstanding the advisory opinion from the Department of the Army, Deputy Chief of Staff G-1- Financial Management Specialist Military Pay Branch, which recommended denial.

2. The Board noted, the applicant honorably served over 14 years of active duty, including multiple combat deployments to Iraq and Afghanistan, and reenlisted and extended his service without receiving any bonuses. The applicant's DD Form 214 does not reflect receipt of separation pay, and his DA Form 4991-R (Declination of Continued Service Statement) clearly states he was ineligible for separation pay due to his refusal to meet service-remaining requirements. The Board determined these documents directly contradict the DFAS debt letter dated 14 June 2018, which claims the applicant received "Prior Service Active Component Separation Payment Totaling \$39,648.58 which posted 10/27/2011." The Board noted, the record is absent any Leave and Earnings Statement (LES) from October 2011 as verification of this payment.

3. Additionally, the Board found that without an LES or other definitive proof of payment, the debt appears to be the result of an administrative error. The applicant's consistent statements, lack of documentation supporting the debt, and the hardship imposed on his family further support the conclusion that the debt is unjust. Therefore, the Board granted cancellation of the indebtedness in the interest of equity and justice.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
XXX	XXX	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	XXX	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 in the amount of \$40,139.61. Any payment deductions, should be recouped.

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, U.S. Code (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 Army Board for Correction of Military Records (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. Department of Defense Instruction 1332.29 (Involuntary Separation Pay (Non-Disability)), in effect at the time, establishes policy, assigns responsibilities, and prescribes procedures concerning eligibility and requirements for receipt of separation pay for Active and Reserve Component Service members who are involuntarily separated from active duty or active service (AD/AS) in accordance with Title 10 USC, Section 1174.

a. Involuntary Separation Pay (ISP) is authorized for Service members who are involuntarily separated from AD/AS and who meet the eligibility requirements of this issuance. A Service member who receives ISP and later qualifies for retired pay, retainer pay, or disability compensation will have their retired pay, retainer pay, or disability compensation reduced until the total amount deducted is equal to the total amount of ISP received. Waivers are not authorized under this provision.

b. Paragraph 3.6 (Repayment of Separation Pay Severance Pay or Readjustment Pay), service members who receive separation pay under this Instruction, or severance pay, or readjustment pay under any provision of law based on service in the Armed Forces, and who subsequently qualify for retired or retainer pay shall have deducted an amount equal to the total amount of separation pay, severance pay, and readjustment pay. This amount will be recouped from each payment of this retired or retainer pay until the total amount deducted is equal to the total amount of separation pay, severance pay, and readjustment pay received.

c. Service members who receive separation pay or severance pay, or readjustment pay under any law based on active military service and become eligible for disability compensation administered by the Department of Veterans Affairs shall have deducted from such disability compensation an amount equal to the total amount of separation pay, severance pay, or readjustment pay received. However, such reduction shall not apply to disability compensation in which the entitlement to that disability compensation is based on a later period of AD than the period of AD for which the separation pay, severance pay, or readjustment pay was received.

3. Department of Defense Financial Management Regulation 7000.14-R, Volume 7a, chapter 35 (Separation Payments), 3.0 (Separation Pay) (Non-Disability), entitlement Full payment of non-disability separation pay is authorized to Service members of the Regular and Reserve Components who have been involuntarily separated from active duty and have met each of the following four conditions:

- member is on active duty or full-time National Guard duty and has completed at least 6-years, but less than 20-years, of active service; Reserve members not on the active-duty list when separated must have 6-years of continuous active duty or full-time National Guard duty immediately preceding separation, period of active duty is considered continuous if any break in active service does not exceed 30-days
- member's separation must be characterized as "honorable"
- member is being separated involuntarily, through either the denial of reenlistment or the denial of continuation on active duty or full-time National Guard duty
- member must have entered into a written agreement with the military service concerned to serve in the Ready Reserve in a Reserve Component of the Armed Forces for a minimum period of 3-years following separation from active duty

4. Army Regulation 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.

5. Army Regulation 601-280 (Army Retention Program) outlines procedures for immediate reenlistment or extension of enlistment for Soldiers serving in the Active Army. For Soldiers separating from the Active Army, it prescribes eligibility criteria and options for enlistment or transfer into the Reserve Component.

a. Paragraph 4-6 states it is prerequisite for a Soldier to have a specified amount of remaining contractual service (service remaining requirement (SRR)) in order for an authorized action to be taken. Examples include deployment, service schools, selection for a special duty assignment or semi-centralized promotion. Reenlistments and/or extensions provide qualified active enlisted Soldiers additional contractual service to meet the SRR.

b. Paragraph 4-12 states that Soldiers refusing to take action to meet an SRR will be advised by their servicing Career Counselor regarding the impact of refusal. The Career Counselor will initiate a DA Form 4991-R (Declination of Continued Service Statement (DCSS)). Soldiers with a DCSS are-

(1) Placed in a nonpromotable status.

(2) Prohibited from reenlistment or extension of enlistment.

(3) Prohibited from applying for reentry into the Regular Army for a period of at least 93 days if separated at normal expiration term of service (ETS), and at least 2 years if voluntarily separated before ETS.

(4) Required to receive a rank determination from HQDA, if approved for reentry into the Regular Army.

(5) Prohibited from application, selection, or attendance for commissioning or warrant officer appointment programs while on the current period of active duty.

(6) Precluded from consideration by HQDA for centralized selection for promotion and/or advanced schooling.

(7) Eligible to request voluntary separation under the provisions of paragraph 16-5, Army Regulation 635-200.

(8) Eligible for other assignments (CONUS and OCONUS) provided you have sufficient service remaining to meet the requirements of the new assignment.

(9) Not eligible for separation pay.

6. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), still in effect, sets forth the basic authority for the separation of enlisted personnel. Chapter 4 provides the policy for the separation of Soldiers upon expiration of enlistment or fulfillment of their service obligation.

//NOTHING FOLLOWS//