

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

... IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240005692

APPLICANT REQUESTS:

- Retroactive payment of Basic Allowance for Housing (BAH)
- Personal appearance (video/telephonically)

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

DD Form 149 (Application for Correction of Military Record)

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 she was entitled to receive payment of BAH while serving in the military. However, she contests that she did not receive payment of this entitlement in 2013. She is unsure of the specific date of this error.
3. A review of the applicant's available service records reflects the following:
 - a. On 1 October 2007, the applicant enlisted in the Army National Guard (ARNG) for 8-years with duty as a 92Y (Unit Supply Specialist).
 - b. On or about 13 March 2008, the applicant completed initial active-duty training.
 - c. On 8 September 2009, the LAARNG issued Orders Number 251-1109 discharging the applicant from the ARNG and reassigning her to the U.S. Army Reserve (USAR) Control Group (Individual Ready Reserve (IRR)), effective 8 September 2008.
 - d. On 10 February 2010, the U.S. Army Human Resources Command (AHRC) issued Orders Number C-02-002235 reassigning the applicant from the USAR Control Group (IRR) to the LAARNG, effective 9 February 2010.

e. On 15 March 2011, the LAARNG issued Orders Number 074-027 discharging the applicant from the ARNG and reassigning her to the USAR Control Group (IRR), effective 2 March 2011.

f. On 11 April 2011, AHRC issued Orders Number C-04-105399 reassigning the applicant to a USAR unit, effective 5 April 2011.

g. On 22 June 2014, the applicant elected to extend her current enlistment by 2 years.

4. The applicant's records further reflect that prior to enlisting, she gave birth to a child on 13 October 2005; her records are void of a DA Form 5960 (Basic Allowance for Housing (BAH) Authorization and Dependency Declaration). On 20 September 2012, Headquarters, 99th Regional Support Command issued Orders Number 12-264-00063 discharging the applicant from the USAR, effective 27 September 2012, with an "Under Honorable Conditions (General)" characterization of service in accordance with Army Regulation (AR) 135-178(Enlisted Administrative Separations). The applicant's most recent DA Form 5016 (Chronological Statement of Retirement Points), dated 12 December 2024, is void of evidence of any performance of qualifying service performed after 27 September 2012. No additional information was either provided or available within her service records.

5. On 3 December 2024, the Department of the Army, Deputy Chief of Staff, G-1, Financial Management Specialist, Military Pay Branch provided an advisory opinion recommending that the applicant's request be returned without action noting that her pay records failed to reflect any outstanding pay entitlements.

6. On 4 December 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 19 December 2024, the applicant has not responded.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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. Upon review of the applicant's request, available military records and Department of the Army, Deputy Chief of Staff, G-1- Financial Management Specialist advisory opinion, the Board concurred with the advising official recommendation that the applicant's request be returned without action noting that her pay records failed to reflect any outstanding pay entitlements. The Board determined there is insufficient

evidence to support the applicant's contentions for retroactive payment of Basic Allowance for Housing (BAH)

2. This board is not an investigative body. The Board determined despite the absence of the applicant's DA Form 5960 (Basic Allowance for Housing (BAH) Authorization and Dependency Declaration) records, they agreed the burden of proof rest on the applicant, however, she did not provide any supporting documentation and her service record has insufficient evidence to support the applicant request. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

■ ■ ■ 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.

[REDACTED]

[REDACTED]

[REDACTED]

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. 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. 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. Department of Defense Financial Management Regulation provides that Reserve Component members called or ordered to active duty for 139 days or less are entitled to BAH-II. However, if the member receives an order modification or extension of assignment, the prospective (new) period of active duty must be 140 days or more and BAH would start on the date of modification. Members called or ordered to active duty for 140 days or more are entitled to BAH. Do not add periods of active duty previously served to obtain the 140 day requirement. Effective 20 April 1999, 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.

4. The Barring Act, Title 31, USC, section 3702 states that the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues. A claim that is not received in the time required under this subsection shall be returned with a copy of this subsection, and no further communication is required.

//NOTHING FOLLOWS//