

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE:

DOCKET NUMBER: AR20240005694

APPLICANT REQUESTS: reconsideration to remit or cancel his debt, related to his failure to fulfill his 4-year active duty enlistment obligation.

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

- DD Form 149 (Application for Correction of Military Record)
- Evidence A - Email communication, January 2021, November 2022, December 2022, and April 2023
- Evidence B - Email communication, January 2021, February 2022, November 2022, December 2022, and April 2023
- Evidence C - Minnesota Attorney General K_ E_ document
- Evidence D - Debt and Claims Management ticket, 3 February 2023
- Evidence E - Defense Finance and Accounting Service (DFAS) Certificate for Income Tax Adjustment
- Evidence F - PHH Mortgage email, 18 August 2023
- Evidence G - PHH Mortgage statement, 16 January 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230006017 on 12 December 2023.

2. The applicant states:

a. This debt impacts his ability to care for himself and dependents. He tried to make payments with DFAS for years and never been able to work out an amount he could afford. He is now on "SSID" [Social Security Disability Insurance or Supplemental Security Income] and DFAS is garnishing \$241.00 a month which is extremely hard on his family. He took a job at the Veterans Administration hospital but due to the manner that payroll is processed it looked like a tax return check and DFAS garnished the whole amount leaving him no income, so he was forced to quit.

b. He has applied for help through DFAS but was informed he was past deadlines for relief. He has spoken to several lawyers (Army and private sector) and reached dead ends. He has spoken to several Congressional offices and was told they could not assist with DFAS. According to Minnesota statute 571.72 no one receiving government assistance can be garnished for non-tax debts, but DFAS will not stop. He has made several efforts to pay this debt with DFAS but was informed the garnishment process has started and will not stop until paid. DFAS will not accept any payment plan at this point.

c. After DFAS started the garnishment, he has not been able to afford basic needs for his family. The funds being garnished went towards school needs and programs his kids took part in. It was also the portion of his income he paid electricity with and now he is receiving assistance from the State to pay the bill. Please reconsider his request based on the need and the fact he has made every effort to handle this before coming to the Board for help. He is out of any other options.

d. He has spoken with DFAS, Representative Z_ S_ (U.S. House), Representative J_ H_ (U.S. House), Senator J_ N_ (U.S. Senate), Senator J_ A_ (U.S. Senate), Veteran help services, and County services offices before coming [back] to this Board for help. He does not know where else to turn. He is on the verge of foreclosure and needs every penny he has to keep his house. This debt and the amount DFAS have added to this debt is a heavy burden.

3. A review of the applicant's service records show:

a. On or about 29 May 2001, he enlisted in the Regular Army for 3 years to serve within the 11 series Career Management Field (CMF) (Infantry Recruit). On 30 May 2001, the applicant's term of enlistment was later changed to "4 years" as reflected on DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), Section F (Discharged from Delayed Entry Program/Enlistment Program), section 20a. The applicant endorsed this change and further acknowledged this change on DA Form 3286-64 (Statement for Enlistment U.S. Army Station/Unit/Command/Area Enlistment Program). DA Form 3286-64 provides that the applicant was guaranteed assignment in Europe upon successful completion of all required training. Item 1g. provides that the applicant's term of enlistment was for 4-years. The applicant acknowledged that if his enlistment contract could not be fulfilled through no fault of his own, the alternatives available to him would be provided 30 days to elect an alternative program for which he was qualified for or request separation. If the applicant failed to make an election within 30 days, the claim would be deemed as waived. DA Form 3286-66 provides that the applicant was entitled to a \$16,000.00 cash bonus as an incentive for his 4-year enlistment.

b. On 5 June 2002, the applicant was determined to be disrespectful to a superior

Noncommissioned Officer (NCO). The applicant was subsequently counseled for this action, having a lack of motivation and a lack of military discipline. Over the next 60 days, the applicant received multiple counseling for speeding, sleeping on guard duty, missing movement, continued disrespect to an NCO etc. The applicant acknowledged being counseled for these actions by endorsing the DA Forms 4856 (Developmental Counseling Form).

c. On 14 August 2002, DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant had normal behavior, was fully alert, fully oriented, his mood was unremarkable, he had clear thinking, and had normal thought content. The mental health provider determined the applicant was mentally responsible for his behavior and could distinguish right from wrong and possessed the mental capacity to participate in administrative actions deemed appropriate by his command.

d. On 2 October 2002, the immediate commander notified the applicant that he was initiating action to separate him under the provisions of Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), Chapter 14, Section III, Paragraph 14-12c, for commission of a serious offense. The reasons for the commander's proposed action were: on or about 5 June 2002, the applicant was disrespectful in deportment toward Sergeant A_ C_ N_, a superior NCO; and on or about 5 June 2002, the applicant was disrespectful in deportment toward Sergeant A_ N_, a superior NCO. The applicant was informed of his rights, and he acknowledged receipt of the notification.

e. On 7 October 2002, the applicant was afforded the opportunity to consult with counsel. He elected not to submit statements in his own behalf, and he was advised by counsel of the basis for his contemplated separation and its effects, the rights available to him and the effect of a waiver of his rights.

f. On 11 October 2002, the applicant's immediate commander formally recommended that the applicant be separated (General, Under Honorable Conditions) from the Army prior to the expiration of his current term of service, under the provisions of AR 635-200, Chapter 14, Section III, Paragraph 14-12c, for commission of a serious offense for the specific reasons of two instances of disrespect to a superior NCO.

g. On 15 October 2002, the applicant's intermediate commander recommended that he be separated (General, Under Honorable Conditions) from the Army for commission of a serious offense.

h. On 21 October 2002, the separation authority directed that the applicant be separated from the Army under the provisions of AR 635-200, Chapter 14, Section III, Paragraph 14-12c, for commission of a serious offense, and he be furnished a General Discharge Certificate.

i. On 1 December 2002, the applicant was discharged from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 18 (Remarks) reflects "Member has not completed first full term of service"; item 24 (Character of Service) reflects "General, Under Honorable Conditions"; item 25 (Separation Authority) reflects "AR 635-200, Paragraph 14-12c."; item 28 (Narrative Reason for Separation) reflects "Misconduct"; item 26 (Separation Code) reflects "JKQ" and item 27 (Reentry Code) reflects "3." He completed 1 year, 6 months, and 2 days of his 4-year enlistment.

j. His record contains:

(1) DFAS letter dated 4 January 2021, reflective of the applicant being advised that his original debt of \$9,261.28 was related to his failure to fulfill his enlistment obligation to perform duty through 29 May 2005. In addition, the applicant had accrued \$25,993.63 of interest and administrative fees. At that time, the applicant had paid \$7,192.83 towards the debt incurred.

(2) Department of Veterans Affairs (VA) letter dated 3 February 2023, which shows a summary of benefits that the applicant is in receipt of as provided by the VA. As of 1 December 2022, the applicant was rated as 70 percent disabled.

k. On 12 December 2023, ABCMR Record Proceedings Docket Number AR20230006017 shows the Board voted unanimously to deny the applicant's request for remission or cancellation of his debt, related to his failure to fulfill his 4-year active duty enlistment obligation. The Board stated:

(1) The evidence of record shows the applicant enlisted for 4 years (not 3 years as he contends). He was guaranteed an assignment in Europe upon successful completion of all required training, with a stipulation that if his enlistment contract could not be fulfilled through no fault of his own, the alternatives available to him would be provided 30 days to elect an alternative program for which he was qualified for or request separation. If the applicant failed to make an election within 30 days, the claim would be deemed as waived. In exchange, he would receive a \$16,000.00 cash bonus as an incentive for his 4-year enlistment.

(2) The evidence further shows the applicant was discharged with a general discharge (less than honorable) due to misconduct and only completed 1 year, 6 months, and 2 days of his 4-year enlistment, which led to recoupment of the paid bonus. DFAS indicated they had advised the applicant that his original debt of \$9,261.28 was related to his failure to fulfill his enlistment obligation to perform duty through 29 May 2005.

(3) The applicant is advised that if he can justify financial hardship and/or provide

explanation of steps taken to resolve his debt; he may reapply to this Board for reconsideration.

4. In support of his request for reconsideration the applicant provides:

a. Evidence A - Email communication in January 2021, November 2022, December 2022, and April 2023, which shows the applicant requesting help and assistance from his Congressional and Senate representatives with his DFAS debt.

b. Evidence B - Email communication in January 2021, February 2022, November 2022, December 2022, and April 2023, which shows the applicant requesting help and assistance from his Congressional and Senate representatives with his DFAS debt.

c. Evidence C - Minnesota Attorney General K_ E_ website extract, which states, the wages of people who receive certain types of government assistance are exempt from garnishment if the person fills out an exemption form.

d. Evidence D - Debt and Claims Management ticket dated 3 February 2023, which states, there have been 3 tickets submitted by the applicant's email address. The applicant was informed to complete the appropriate forms and memorandums for submission.

e. Evidence E - DFAS Certificate for Income Tax Adjustment stating he paid the United States government a total of \$5,564.89 toward settlement of his debt.

f. Evidence F - PHH Mortgage email to applicant, dated 18 August 2023, which states, the applicant was contacted to confirm that PHH received a request for account information from his Homeowner Assistance Fund program (HAF). They were in the process of gathering the required mortgage verification data so the state agency can proceed with reviewing his HAF application.

g. Evidence G - PHH Mortgage statement dated 16 January 2024, which shows an amount due of \$11,093.00. It also provides the applicant's account information, explanation of amount due, past payment breakdown, important messages, and transaction activity.

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 evidence showing that the applicant's request is based upon challenges in paying the debt and not the fact that the debt is in error, the Board concluded there was insufficient evidence of an error or injustice warranting a correction to the applicant's pay record.

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.

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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 601-210 (Active and Reserve Components Enlistment Program), Paragraph 5-86 (Entitlement) provides that entitlement to the incentive is contingent on successful completion of training and award of a designated Military Occupational Specialty. A Soldier is entitled to the incentive in effect on the date of initial contract in the Delayed Entry Program (DEP). Any increase or decrease in the award level made after enlistment in the DEP or after enlistment on active duty will not change the Soldier's award level.

a. Paragraph 8-6 (Correction of Term of Enlistment) provides that an error made in processing an enlistment may indicate that the term of enlistment shown on DD Form 4 is for a longer term than intended. If so, then unit commanders will submit a request for correction of enlistment agreement through military channels to the U.S. Army Human Resources Command (AHRC). The request will contain evidence to support the claim of error in the period of enlistment shown on the DD Form 4, DD Form 1966, DA Form 3286 or other documents in support of the claim. Every effort will be made to correct the claim once justified and commander has the authority to approve.

b. Paragraph 9-9 (Enlistment Program 9C, (U.S. Army Incentive Enlistment Program (Enlistment Bonus, Army College Fund, Loan Repayment Program) provides that persons who do not complete their term of enlistment voluntarily or because of misconduct will be required to refund the percentage of the bonus that corresponds to the unexpired part of the total enlistment period (such as the unearned portion of the bonus).

c. Paragraph 9-8 (Enlistment Program 9B, U.S. Army Station – Unit Command Area Enlistment Program) provides that this program is available to qualified non-prior service applicant's enlisting for a minimum term of enlistment authorized by REQUEST. Under this program, enlistees are guaranteed a specific military occupational specialty or career management field, a first assignment to a station, unit, command, or area. Applicants are advised:

(1) If the station, unit, command, or area to which a person is assigned or attached under the provisions of this program is deployed, relocated, reorganized, or redesignated, the person will remain with the unit of assignment. No guarantee of "location" is made when enlisting for a specific area, unit, or command.

(2) If the station, unit, command, or area is inactivated, disbanded, or discontinued, the person will be subject to reassignment according to the needs of the Army.

(3) Person may be subject to periods of temporary duty on an individual basis away from the station of choice for which enlisting. Such periods of temporary duty will not count against guaranteed stabilization period.

(4) Persons may receive initial assignment at interim location to unit undergoing training. That unit will deploy to the station of choice upon successful completion of training. Stabilization starts upon arrival at station.

2. 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 Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. In accordance with the authority of Title 10, U.S. Code (USC), section 7837 and/or Title 32, USC section 710(c), 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.

3. Title 10, USC, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.

4. Title 37, USC, section 303a(e)(1) - Repayment of Unearned Portion of Bonuses and Other Benefits When Conditions of Payment not Met; Termination of Entitlement to Unpaid Amounts, states:

a. A member of the uniformed services who receives a bonus or similar benefit and whose receipt of the bonus or similar benefit is subject to the condition that the member continue to satisfy certain eligibility requirements shall repay to the United States an amount equal to the unearned portion of the bonus or similar benefit if the member fails to satisfy the eligibility requirements and may not receive any unpaid amounts of the bonus or similar benefit after the member fails to satisfy the requirements, unless the Secretary concerned determines that the imposition of the repayment requirement and termination of the payment of unpaid amounts of the bonus or similar benefit with regard to the member would be contrary to a personnel policy or management objective, would be against equity and good conscience, or would be contrary to the best interests of the United States.

b. The Secretary concerned may establish, by regulations, procedures for determining the amount of the repayment required under this subsection and the circumstances under which an exception to the required repayment may be granted. The Secretary concerned may specify in the regulations the conditions under which an

installment payment of a bonus or similar benefit to be paid to a member of the uniformed services will not be made if the member no longer satisfies the eligibility requirements for the bonus or similar benefit. For the military departments, this subsection shall be administered under regulations prescribed by the Secretary of Defense.

//NOTHING FOLLOWS//