

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 December 2024

DOCKET NUMBER: AR20240005957

APPLICANT REQUESTS: the spouse of the deceased Service Member (SM) requests, in effect:

- cancellation, remission, or to waive Survivor Benefit Plan (SBP) and/or Retired Serviceman's Family Protection Plan (RSFPP) debt
- reimbursement of money paid to the Defense Finance and Accounting Service (DFAS) and funds that are being withheld to pay off a debt that was not the SM

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's (spouse) statement
- Enclosure list
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 13 November 1962
- State of Mississippi Marriage License, 10 April 1966
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 November 1991
- Miscellaneous letters, 14 January 1999
- Durable Power of Attorney, 17 April 2019
- DFAS letter to the Department of Veterans Affairs (VA), October 2003
- VA Reconciliation document, October 2003
- SM letter to DFAS, 21 December 2003
- Certification Statement, 23 December 2003
- Copies of checks to the U.S. Department of Treasury, 22 October 2008
- SM letter, 28 December 2008
- State of Mississippi Certificate of Death, 26 January 2023
- Applicant's letter to DFAS, 5 September 2023

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:

a. She is writing about a debt the SM was paying back because of a deceased spouse. The SM was only married once and that was to her. They [DFAS] got him confused with another military member. She is still alive. The SM contacted the company to inform them that they had got him confused with another C_ W_. They have his name, address, and social security number but this was written to the wrong C_ W_. The SM received a check for death refund. The SM spouse [applicant] is still alive.

b. She further states, money is being withheld for erroneous debt, that is linked to the loss of another military member's spouse (wife). The debt that is being withheld is linked to another military member who lost his wife back in the 1990s. Both members have the same first and last name (C_ W_), DFAS identified the SM as the service member they paid a death benefit in error. The SM filled out paperwork to inform them that they had the wrong person, showed his driver license, birth certificate, Social Security Number (SSN), marriage license and she spoke to a person on the phone, that said that her name was P-.

c. After the SM sent them everything, they asked for, they never replied acknowledging that they had received the information they asked for. They would continue to tell him you are the right person. There are several C_ W_ and she knows that they do not have the same SSN, birthdate, same parents name, nor the same wife's name. She is the widow of C_ W_ [SM], date of birth ■ May 19XX, SSN XXX-XX-■■■■, his parents are W_ and A_ S_ W_ of Jackson, MS.

d. The SM spoke with a lot of people, during this ordeal to no avail, they still insisted he owes the debt. Enclosed the Board will find a copy of receipt of a cashier's check that he paid that was not owed, because they threatened to garnish his account if he did not pay the debt. Enclosed is Miscellaneous Letter, Debt Certification Statement, Disability Compensation letter, take note of paragraph 3, also stating the loss of a dependent spouse. The applicant is requesting assistance with obtaining reimbursement of money paid to DFAS, funds that are being withheld to pay off a debt that was not the SM. The SM paid Survivor Benefit each month. Also, enclosed is a copy of the request letter to DFAS.

3. A review of the SM's official records show:

a. Having prior Reserve enlisted service, the SM enlisted in the U.S. Army Reserve (USAR) on 11 March 1974 and reenlisted on multiple occasions.

b. On 10 June 1993, the USAR Personnel Center notified the SM that he was eligible for Retired Pay at Age 60 (20-Year Letter).

c. On 19 September 1993, DARP Form 3856 (Reserve Component (RC) Supplemental SBP Election Certificate) shows the SM elected to participate in the RC Supplemental SBP for his spouse and elected 20 percent coverage.

d. DD Form 1883 (SBP Election Certificate) shows:

- 27 July 1993, the SM elected spouse and children coverage, and to provide an annuity based on the full amount of retired pay; the SM elected Option C (immediate coverage) and the applicant and SM endorsed the form
- 20 September 1993, the SM and witness also endorsed the form

e. On 28 December 1993, Headquarters, 121st USAR Command published Orders Number 141-10, which assigned the SM to the USAR Control Group (Retired), effective 8 December 1993.

f. On 28 September 2001, DD Form 2656 (Data for Payment of Retired Personnel) shows the applicant was designated as the beneficiary for unpaid retired pay and she was also listed as a dependent. The SM elected coverage for spouse only based on full gross pay plus supplemental coverage of 20 percent.

g. On 8 January 2002, the USAR Personnel Command notified the SM that his application for retired pay under Title 10, USC, Section 12731, was approved, and placed him on the Army of the United States Retired List, in the rank of sergeant (E-5), effective 2 May 2002.

h. On 25 August 2023, the DFAS, U.S. Military Retired Pay Office notified the applicant that they received her claim for Arrears of Pay from the SM's account, and according to Title 31, USC, Section 3716 and in conjunction with the Department of Defense Financial Management Regulation, Volume 7b, Chapter 30 paragraph 300205 B (1-2), all funds due must be applied to the existing debt(s) on an account. A debt for SBP premiums was identified on the SM's account. All Arrears of Pay (\$447.19) was applied to the debt.

i. On 12 September 2023, DFAS, U.S. Military Annuitant Pay Office notified the applicant that the SBP and/or RSFPP annuity costs and/or interest were not fully paid by the retiree [servicemember] before death. As a result, they must apply 100 percent of her monthly SBP or RSFPP annuity payments to the indebtedness until the debt is paid in full. The principal due shows \$5,313.66, cumulative collected: \$2,472.53, and total due: \$2,841.13.

j. On 6 March 2024, DFAS, U.S. Military Annuitant Pay Office notified the applicant that the SBP and/or RSFPP annuity costs and/or interest were not fully paid by the retiree [SM] before death. As a result, they must apply 100 percent of her monthly SBP or RSFPP annuity payments to the indebtedness until the debt is paid in full. The principal due shows \$5,313.66, interest charge due: \$4.35, cumulative collected: \$3,982.98, and total due: \$3,987.33.

4. In support of her request the applicant provides, in pertinent part:

- a. Enclosure list showing the documents she enclosed with her request.
- b. State of Mississippi Marriage License showing she married the SM on 10 April 1966.
- c. Miscellaneous letters document dated 14 January 1999, which states, in part, returned check, payee deceased, and overpayment.
- d. Durable Power of Attorney dated 17 April 2019, which appointed the applicant as the SM's attorney-in-fact to act in his name, place, and stead.
- e. DFAS letter to the VA on or about October 2003, which states, their records indicated that the last documentation of award amount was received via VA Reconciliation of October 2003. Based on this the SM's retired pay was reduced by the VA award amounts and effective dates shown. The retired pay account for the SM was suspended, effective 2 May 2002, due to total VA Waiver.
- f. VA Reconciliation document dated October 2003, which shows, periods covered, amounts withheld and should withhold, the difference, number of months/days, and amount owed.
- g. SM's letter to DFAS dated 21 December 2003, wherein, he states that he received the worksheet for establishing a debt, and he did not understand why he owed the money. He acknowledged receipt of the of the letter stating his retired pay account was suspended, effective 2 May 2002, due to total VA Waiver. He also requested more details.
- h. Certification Statement dated 23 December 2003, which shows the debt certifying official certified the debt for collection action by the Defense Debt Management System.
- i. Copies of checks to the U.S. Department of Treasury dated 22 October 2008, submitted by the servicemember.

j. SM's letter dated 28 December 2008, acknowledging receipt of the debt certification statement. The SM reiterated his contentions that the debt was not his and DFAS had identified the wrong servicemember.

k. State of Mississippi Certificate of Death, which shows the SM's date of death as 26 January 2023.

l. Applicant's letter to DFAS dated 5 September 2023, wherein, she stated in part, she did not agree with the findings noted in the letter addressed to her on 25 August 2023 from DFAS and she is officially contesting said findings while also requesting an open audit and detailed information into alleged survival benefit plan debt.

5. On 18 December 2024, the Defense Finance and Accounting Service (DFAS) Office of General Counsel provided information pertaining to the applicant's request and stated:

a. The SM's retired pay was fully offset by his VA disability compensation beginning 1 November 2003. He began receiving concurrent retired pay and VA disability compensation on 1 September 2016, retroactive to 1 March 2016. Because he was not in receipt of retired pay until September 2016, no SBP premiums were deducted for the period of 1 November 2003 through 1 September 2016 since there was no retired pay to deduct from. He was required to directly remit his SBP premiums but did not do so, resulting in a roughly \$5K debt at the time of his death. Once he passed away, the SM arrears of pay was applied to the debt. The rest of the debt amount was collected from the applicant's annuity until it was paid in full. The applicant received a partial annuity payment on 1 August 2024 and began receiving her full monthly annuity on 3 September 2024.

b. Reference the debt against another member, the applicant referenced a 1999 letter, which she provided (attached) regarding an alleged debt. It appears the letter concerns something between the SM and the VA (not DFAS) that would have occurred before his retirement in 2002. We are not really sure what that letter pertained to but DFAS did not indebt him for anything related to it.

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. The applicant is the surviving spouse of a retired service member (SM). She was married to the FSM when he received his notice of eligibility for non-regular retirement (20 year letter). The FSM elected to participate in SBP with his spouse as beneficiary and became eligible for retired pay in 2002, but it was suspended from 2003 until 2016 due to a VA waiver. Since he was not receiving

retired pay, SBP premiums were not deducted and he was required to pay the premiums directly for those months which he did not do. Based upon those facts outlined in the evidence, the Board concluded there is insufficient evidence of an error or injustice which would warrant a change to the RCSBP debt collected from the FSM's retirement.

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.

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) 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that 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. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.
3. Title 31, USC, section 3716 (Administrative Offset) states, after trying to collect a claim from a person under section 3711 (Collection and Compromise) of this title, the head of an executive, judicial, or legislative agency may collect the claim by administrative offset. The head of the agency may collect by administrative offset only after giving the debtor — (1) written notice of the type and amount of the claim, the intention of the head of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor under this section; (2) an opportunity to inspect and copy the records of the agency related to the claim; (3) an opportunity for a review within the agency of the decision of the agency related to the claim; and (4) an opportunity to make a written agreement with the head of the agency to repay the amount of the claim.
4. 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.
5. 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.

//NOTHING FOLLOWS//