

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240006083

APPLICANT REQUESTS:

- debt remission (\$579.00)
- personal appearance (video/telephone)

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, 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 \$579.00 was collected from his Federal taxes. He was advised that this action occurred due to the previous over payment received. The applicant contests that he was incarcerated during that time and denies having access to the funds. Further, the applicant is unable to verify if the funds were in fact ever deposited into his account. The applicant adds that he was incarcerated for 17 years.
3. A review of the applicant's available service records reflects the following:
 - a. On 8 August 2000, the applicant enlisted in the Regular Army for 3 years.
 - b. On or about 3 September 2000, the applicant was absent without authority.
 - c. On 5 October 2000, the applicant was apprehended and returned to military custody. DD Form 616 (Report of Return of Absentee) reflects that the applicant had been absent since 3 September 2000.
 - d. On or about 8 October 2000, the applicant was absent without authority.

e. On 10 August 2001, the applicant was apprehended and returned to military custody. DD Form 616 reflects that the applicant had been absent since 8 August 2000.

f. On 18 December 2001, the applicant was tried in civilian court for breaking and entering, finance violation and home invasion. He was sentenced to 72 months – 20 years confinement.

g. On or about 8 January 2003, the applicant's commander initiated separation action in accordance with Army Regulation 635-200, chapter 14-5a, section II with a recommendation that he receive an Other Than Honorable characterization of service.

h. On 5 March 2003, the General Court Martial Convening Authority directed that the applicant be discharged in accordance with Army Regulation 635-200, chapter 14-5a, section II (Misconduct – due to Civil Conviction).

i. On 17 March 2003, Headquarters, U.S. Army Armor Center and Fort Knox issued Orders Number 076-0176 reassigning the applicant to the U.S. Army transition point pending separation processing.

j. On 19 March 2003, the applicant was discharged from military service in accordance with Army Regulation 635-200, chapter 14-5a, section II. DD Form 214 (Certificate of Release or Discharge from Active Duty) reflects the following:

- Item 28 (Narrative Reason for Separation) – Misconduct
- Item 29 (Dates of Time Lost During this Period) – 3 September 2000 – 4 October 2000

4. On 30 January 2025, the Defense Finance and Accounting Service advised that the applicant has a \$301.06 (as of 3 January 2025) debt that has been transferred to the Treasury Offset Program so he may owe more than this amount due to penalties, interest and fees. The initial debt amount was \$793.40, of which \$586.35 was collected. The initial over payment occurred while the applicant was absent without leave from 8 October 2000 – 9 August 2001.

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. Upon review of the applicant's petition and available military records, the Board noted the applicant's contentions that the debt resulted from an overpayment during a period in which he was incarcerated and absent without leave, and he denies

having access to or receiving the funds in question. He further states that he was incarcerated for 17 years and is unable to verify whether the funds were ever deposited into his account.

2. The Board found the applicant enlisted in the Regular Army on 8 August 2000 and was absent without authority beginning 3 September 2000. He was apprehended and returned to military custody twice before being tried in civilian court and sentenced to a lengthy term of confinement. The Board determined the applicant's DFAS records indicate that the initial debt of \$793.40 was assessed due to overpayment during the applicant's unauthorized absence from 8 October 2000 to 9 August 2001, and that \$586.35 has already been collected. Given the applicant's prolonged incarceration, lack of access to the funds, and inability to verify receipt of the overpayment, the Board determined that collection of the remaining debt would be unduly burdensome and inequitable. As such, the Board found sufficient justification to grant relief. Therefore, remission of the remaining debt is granted,

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

XXX	XXX	XXX	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 has been relieved. Direct the Department of the Army, the Department of the Treasury and DFAS to immediately cease all recoupment efforts and garnishment.

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, 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) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. 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. 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.
3. 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.

4. Department of Defense Financial Management Regulation, Chapter 3 (Absence from Duty – Effect on Pay and Allowances) provides that a service member is entitled to all pay and allowances earned through the day before the first day of their unauthorized absence. If the member is delivered to civil authorities by military authorities, member is entitled to all pay and allowances earned through the day prior to the date of such delivery.

//NOTHING FOLLOWS//