

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240006433

APPLICANT REQUESTS: in effect –

- Correction of records to remove the statement he was entitled to receive separation pay in the amount of \$16,997.31; and
- A personal appearance before the Board via 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 he was approved for the Variable Separation Incentive (VSI) in 1992. However, when his records went to the E-7 Board, he was selected for the Army Qualitative Management Program. He was not paid the VSI in the amount of \$16,997.31 (gross), \$13,547.85 (net). While it does show on his DD Form 214 (Certificate of Release or Discharge from Active Duty) and his separation orders, he never received this separation payment. He has been granted his Service-Connected Disability; the Department of Veterans Affairs (VA) wants to recover this amount (which he never received). The VA plans to start collecting it in June of 2024 and it is supposed to be paid back by November of 2025.
3. A review of the applicant's military service records show:
 - a. He enlisted in the Regular Army on 22 June 1976 and served through multiple extensions and reenlistments.
 - b. On 17 September 1986, he received Non-Judicial Punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for violating a lawful general regulation by wrongfully engaging in an actual nonprofessional social

relationship of a personal nature with a basic training female Soldier, Private First Class (PFC) B_ E_ B_, on several occasions. He met privately with PFC B_ in his off-post residence and entertained her by drinking alcoholic beverages. Additionally, he encouraged and allowed her to sleep at his off-post residence. He also permitted her to enter a privately owned vehicle and he transported her back on post from his residence. His punishment consisted of reduction to the pay grade E-5. He appealed and submitted additional matters; nevertheless, his appeal was denied on 6 October 1986.

c. On 28 October 1986, he was removed from the Drill Sergeant Career Development Program under the provisions of Army Regulation (AR) 614-200, paragraph 8-21a (1) and (3), for failure to maintain high standards of conduct and professionalism by engaging in a nonprofessional social relationship of a personal nature with a basic trainee.

d. On 19 August 1987, the U.S. Army Chemical and Military Police Centers and Fort McClellan published Orders Number 159-18, which promoted the applicant to the rank/grade of staff sergeant (SSG)/E-6, effective 1 September 1987.

e. On 16 June 1992, the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN, denied the applicant's appeal of the Department of the Army imposed bar to reenlistment and directed he be separated from the Army no later than 30 September 1992 under the provisions of AR 635-200 (Personnel Separations – Enlisted Personnel), paragraph 16-8.

f. On 21 August 1992, Headquarters, U.S. Army Aviation Center and Fort Rucker published Orders Number 234-215, which assigned the applicant to the Transition Point and discharged him on the same date. In pertinent part, additional instructions state:

(1) "Soldier entitled to half separation pay in accordance with Title 10, U.S. Code (USC), section 1174."

(2) Soldiers who receive VSI/SSB (Special Separation Bonus) based on service in the Armed Forces, and who subsequently qualify under Title 10 USC or Title 14 USC for retired or retainer pay shall have deducted an amount equal to the total amount of VSI/SSB pay not previously recouped. This amount will be recouped from each payment of retired or retainer pay until the total amount deducted is equal to the total amount of VSI/SSB received.

g. On 21 August 1992, the applicant was honorably discharged from the Army. He completed 16 years and 2 months net active service this period. In pertinent part, his DD Form 214 shows in:

- Item 18 (Remarks) – "Separation Payment \$16,819.00"

- Item 25 (Separation Authority) – AR 635-200, Paragraph 16-8
- Item 26 (Separation Code) – JCC (Reduction in Authorized Strength)
- Item 28 (Narrative Reason for Separation) – Reduction in Authorized Strength

4. The applicant's service record is void of evidence if he received the separation pay nor did the applicant provide evidence that he did not receive the separation pay.

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 petition and available military records, the Board found insufficient evidence to support the applicant contentions. The Board noted the applicant assertions that although his DD Form 214 and separation orders reflect entitlement to Variable Separation Incentive (VSI) pay, he never received the payment.

2. However, the burden of proof rests solely with the applicant, and he has not provided any substantiating documentation, such as finance records, pay statements, or official correspondence to support his claim of non-payment. The Board is not an investigative body and relies on the evidence presented. The Board determined the official records clearly indicate that the applicant was authorized separation pay under Title 10, USC, Section 1174, and there is no documentation in the record to contradict this entitlement. Furthermore, the applicant's service history includes disciplinary actions and removal from the Drill Sergeant Career Development Program, which were considered in his separation process. In the absence of compelling evidence to support the applicant's claim, the Board agreed that the record is factually accurate and administratively correct. Therefore, relief is denied.

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.

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 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, the regulation states that the ABCMR begins its consideration of each case with the presumption of administrative

regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that applicants 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. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Paragraph 16-8 (Early separation due to reduction in force, strength limitations, or budgetary constraints) provides that Soldiers may be separated prior to expiration of term of service or period for which ordered to Active Duty when specifically authorized as set forth below.

a. When authorization limitations, strength restrictions, or budgetary constraints require the size of the enlisted force to be reduced, the Secretary of the Army, or his designee, will authorize voluntary or involuntary early separation under the authority of Title 10, U.S. Code, section 1169 or 1171. The Commander, Personnel Command (PERSCOM), will element this program by issuing separation instructions pertaining to a specific class or category of Soldiers. Early separation under this paragraph is for the convenience of the Government.

b. Personnel to whom this paragraph applies will be notified through channels by commanders specified in paragraph 1-21 of this document. Notification is based on information and instructions furnished by PERSCOM. Commanders are responsible for the timely separation of Soldiers.

c. Personnel separated under this paragraph will be discharged or released from Active Duty, as appropriate. Specific separation dates will be as prescribed in PERSCOM implementation instructions.

4. Title 10, USC, section 1174 (Separation pay upon involuntary discharge or release from active duty) states:

a. A regular enlisted member of an armed force who is discharged involuntarily or as the result of the denial of the reenlistment of the member and who has completed six or more, but less than 20, years of active service immediately before that discharge is entitled to separation pay computed under subsection (d) unless the Secretary concerned determines that the conditions under which the member is discharged do not warrant payment of such pay.

b. Separation pay of an enlisted member shall be computed under paragraph (1) of subsection (d), except that such pay shall be computed under paragraph (2) of such

subsection in the case of a member who is discharged under criteria prescribed by the Secretary of Defense.

c. Subsection (d) provides that the amount of separation pay which may be paid to a member under this section is — (1) 10 percent of the product of (A) his years of active service, and (B) 12 times the monthly basic pay to which he was entitled at the time of his discharge or release from active duty; or (2) one-half of the amount computed under clause (1).

d. Subsection (h), in pertinent part, provides that a member who has received separation pay under this section, or severance pay or readjustment pay under any other provision of law, based on service in the armed forces shall not be deprived, by reason of his receipt of such separation pay, severance pay, or readjustment pay, of any disability compensation to which he is entitled under the laws administered by the Department of Veterans Affairs, but there shall be deducted from that disability compensation an amount equal to the total amount of separation pay, severance pay, and readjustment pay received, less the amount of Federal income tax withheld from such pay (such withholding being at the flat withholding rate for Federal income tax withholding, as in effect pursuant to regulations prescribed under chapter 24 of the Internal Revenue Code of 1986).

5. Title 10, USC, section 1175 (Voluntary separation incentive) states in:

a. Section (a), consistent with this section and the availability of appropriations for this purpose, the Secretary of Defense and the Secretary of Homeland Security may provide a financial incentive to members of the armed forces described in subsection (b) for voluntary appointment, enlistment, or transfer to a reserve component, requested and approved under subsection (c).

b. Section (b), the Secretary of Defense and the Secretary of Homeland Security may provide the incentive to a member of the armed forces if the member — (1) has served on active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty for more than 6 but less than 20 years (2) has served at least 5 years of continuous active duty or full-time National Guard duty or any combination of active duty and full-time National Guard duty immediately preceding the date of separation.

c. Section (c), a member of the armed forces offered a voluntary separation incentive under this section shall be offered the opportunity to request separation under a program established pursuant to section 1174a of this title. If the Secretary concerned approves a request for separation under either such section, the member shall be separated under the authority of the section selected by such member.

d. Section (e), (1) The annual payment of the incentive shall equal 2.5 percent of the monthly basic pay the member receives on the date appointed, enlisted, or transferred to the reserve component, multiplied by twelve and multiplied again by the member's years of service. (2) A member entitled to voluntary separation incentive payments who is also entitled to basic pay for active or reserve service, or compensation for inactive duty training, may elect to have a reduction in the voluntary separation incentive payable for the same period in an amount not to exceed the amount of the basic pay or compensation received for that period. (3) A member who is receiving voluntary separation incentive payments shall not be deprived of this incentive by reason of entitlement to disability compensation under the laws administered by the Department of Veterans Affairs, but there shall be deducted from voluntary separation incentive payments an amount equal to the amount of any such disability compensation concurrently received. Notwithstanding the preceding sentence, no deduction may be made from voluntary separation incentive payments for any disability compensation received because of an earlier period of active duty if the voluntary separation incentive is received because of discharge or release from a later period of active duty.

//NOTHING FOLLOWS//