

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 March 2025

DOCKET NUMBER: AR20240006656

APPLICANT REQUESTS: remission/cancellation of indebtedness for overpayment of pay and allowances and reimbursement of monies collected due to the indebtedness.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 20 January 2006
- Notice of Offset State of New Jersey dated 3 May 2024, applicant state tax refund offset for collection of debt owed to the Defense Finance and Accounting Service (DFAS)

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 effect:

- He was ordered back to active duty for a Court-martial; paid excess leave for the period of 14 July through 24 August 2003
- money legally deposited into his account
- he did not receive any notification of the overpayment until he received the notice of the offset
- indebtedness is adversely affecting his family
- his spouse is being punished for a debt he should not be held accountable for

3. A review of the applicant's service record shows:

- on 1 October 1991, the applicant enlisted in the Regular Army, he had continuous service through reenlistments and extension

- on 29 November 2000, the applicant's duty status was changed to Absent Without Leave (AWOL) effective 27 November 2000
- on 27 December 2000, the applicant's duty status was changed to dropped from the rolls effective 27 December 2000
- on 27 February 2003, the applicant was apprehended by civil authorities in Bell County, TX and was returned to military control
- the applicant was found guilty of one specification of without authority and with intent to remain away therefrom permanently, absent himself from his unit and did remain absent in desertion until apprehended by Special Court-martial Orders Number 5 dated 15 October 2003:
 - sentence was adjudged on 29 April 2003, to be reduced to the rank/grade of private/E1, confined for 5-months and discharged with a Bad Conduct Discharge
 - sentence was approved and except for the part of the sentence extending to the Bad Conduct Discharge be executed; he was credited with 61-days of confinement
- Special Court-martial Orders Number 14 dated 24 February 2005 affirmed the applicant's sentence from Special Court-martial Orders Number 5 wherein he was sentence to reduction to E1, 5-months confinement and a Bad Conduct Discharge, the Bad Conduct Discharge to be executed
- on 20 January 2006, the applicant was discharged from active duty with 42-days of excess leave during 14 July through 24 August 2003 and lost time during 2 May through 14 July 2003

4. On 12 March 2025, in the processing of this case, the Deputy Chief of Staff G1 provided an advisory opinion regarding the applicant's indebtedness. The advisory official recommended disapproval of his request for cancellation of the debt. While adjusting the applicant's account to reflect his separated status, he continued to receive pay. The system continued to issue him payments even though he was in a non-pay status. Which resulted in a debt because he was paid while ineligible for those payments. The applicant communicated with DFAS Out of Service Debt and Claims office and agreed on a payment plan in 2007. DFAS recalled the debt from the Department of the Treasury in 2007 to provide him an opportunity to make payments. However, in 2024, the debt was sent back to the Department of the Treasury for collection. The additional fees on the debt are due to costs added by the Department of the Treasury for their services.

5. on 13 March 2025, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

6. On 4 March 2025, in the processing of this case, DFAS provided information regarding the applicant's debt stating a debt was posted to his account on 13 May 2003 in the amount of \$8,752.88, the largest portion was for pay and allowances for the period of 28 February through 28 April 2003. The initial letter had shown the debt in the amount of \$7,344.25 and \$4,206.94 being collected. After interest, penalties and administrative fees had been added, the debt was in passive collections. Which means it has been through the credit bureau reporting and two private collection agencies, so he will not receive a monthly billing or any other actions except the Department of the Treasury offset. If he files taxes or receives any other Federal funds, it will be taken until his debt is fully collected.

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 available documentation and the advisory opinion showing the applicant continued to receive improper payments after his separation from military service and the lack of any rebuttal of those facts submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military pay record.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

X

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. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.
3. Department of Defense Financial Management Regulation 7000.14-R, volume 7a, chapter 1 (Basic Pay) prescribes the criteria for determining creditable service for military members; provides examples for computing valid creditable service; states periods of service that are not creditable for pay purposes; cites conditions for the payment of military pay entitlements; explains the computation of leave and conditions for leave accrual; and provides for situations where enlistments are not valid. A member may not be employed in another capacity by the government and receive pay, other than the pay and allowances that accrue by reason of the military status.
4. Title 10 United States Code, section 802 (Persons Subject to this Chapter), (d) (1), a member of a reserve component who is not on active duty and who is made the subject of proceedings under section 815 (article 15) or section 830 (article 30) with respect to

an offense against this chapter may be ordered to active duty involuntarily for the purpose of:

- a preliminary hearing under section 832 of this title (article 32);
- trial by court-martial; or
- non-judicial punishment under section 815 of this title (article 15)

//NOTHING FOLLOWS//