

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 April 2025

DOCKET NUMBER: AR20240009469

APPLICANT REQUESTS:

- correction to his record to maintain dual compensation from Military Retirement and Civil Service
- reimbursement of \$191.09 for 41 months paid to the Defense Finance and Accounting Service (DFAS)

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 1559 (Inspector General Action Request) dated 11 July 2024 (40pgs):
  - dual compensation error and negative effects of dual compensation placed on Retired Military members who entered the civilian work force
  - seek to petition military service secretary and make claim to DFAS for correction of record
  - request review and discussion of a consideration of repayment for 41 months of debt claimed by DFAS which was deducted from military retirement from 1991 to 1994
  - he feels the hid dual compensation reimbursement is an error and punishment
  - he states Dual Compensation Act of 1964, states: the reduction in retired or retirement pay required shall not apply to a retired officer of any regular component of the uniformed services employed on a temporary basis
- listed enclosures to the DAIG complaint submitted (pages 13-20)
- DD Form 214 (Certificate of Release or Discharge from Active Duty) ending 31 January 1981 and Orders Number S234-21, 2 December 1980 retired him in the rank of Chief Warrant Officer Three (CW3), effective 31 January 1981
- Letter from DFAS to applicant recommends he seek assistance through a request using DD Form 149
- Statement of Understanding of reporting employment endorsed by the applicant on 30 January 1981
- DFAS statements of debt and amount (\$191.09) to be deducted from his retired pay monthly until \$6,829.46 was recouped

- Memorandum, Subject: Correction of Military Records, 12 September 1978, ABCMR corrected the applicants request to show he was promoted to the temporary grade of CW3 on 6 August 1973

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:
  - the United States Code referencing retired members of the uniformed services, reduction in retired or retainer pay; employed on a temporary basis for the first 30 day period for which he received pay is wrong
  - correction should be made that the Secretary established a Review Board, or the Secretary unilaterally reviews his claim of indebtedness due to error committed by DFAS
  - he is reacting to a situation of personal interest and fair play
  - Dual Compensation Act of 1964 states: the reduction in retired or retirement pay required shall not apply to a retired officer of any regular component of the uniformed services employed on a temporary basis
3. A review of the applicant's service records show the following on:
  - On 1 February 1955, the applicant enlisted in the U.S. Army Reserve (USAR) as a private (PVT) for eight (8) years
  - Letter Orders Number 3-18 dated 2 March 1961 ordered the applicant to active duty for two (2) years from 4 April 1961 to 3 April 1963
  - DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows effective 8 September 1961 the applicant was discharged for immediate reenlistment
  - Special Orders Number 68 dated 21 March 1967 discharged him from enlisted status to a warrant officer
  - On 25 March 1967, he was appointed as a Reserve warrant officer and executed his oath of office
  - Memorandum, Subject: Letter of Appointment in the Regular Army dated 4 December 1978, appointed him as a warrant officer in the Regular Army (RA) in the rank of CW3
  - Orders Number 104-1-A-173 dated 4 December 1978, appointed the applicant as a permanent warrant officer in the RA

- Memorandum, Subject: Voluntary Retirement dated 2 October 1980, shows the applicant requested voluntary retirement
- Orders Number S234-21 dated 2 December 1980, ordered his retirement and placed him on the retired list effective 31 January 1981
- Memorandum, Subject: Officer Retirement dated 10 December 1980 announced the retirement of the applicant by the Department of the Army
- Statement of Understanding of reporting employment endorsed by the applicant on 30 January 1981
- DD Form 214 shows in block 12a (Date Entered Active Duty this Period) he entered active duty this period on 25 March 1967 and was honorably released from active duty on 31 January 1981 for retirement
- Office of the Inspector General Letter to Applicant dated 16 August 2024, referred him to ABCMR for resolution

#### 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 review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board determined that relief was not warranted. The Dual Compensation Act of 1964, which was in effect until 1999, provided that a retired officer of the regular armed forces who was receiving pay as a federal civilian would have their retired pay reduced to the first \$2,000 received annually plus one-half of the remainder. It appears that the applicant's retired military pay was reduced in accordance with that Act. While the Dual Compensation Act does provide that the reduction shall not apply to the first thirty-day period of employment on a temporary basis, the applicant has provided neither evidence that his employment was classified as temporary nor evidence that his retired pay was (or was not) reduced during the first thirty-day period of his civilian employment.

2. Given the presumption of regularity in Government records and affairs, absent some evidence that an incorrect amount was deducted from the applicant's retired pay, there appears to be no error or injustice in this case. The applicant did not provide evidence of the exact dates of his federal civilian employment, or the amount of his retired military pay for the period in question. The Board is therefore unable to evaluate whether deductions were made in accordance with the law but must assume that they were. Accordingly, the Board finds no error or injustice has occurred and denies the requested relief.

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.

5/5/2025

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 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 5, USC, section 5532 (Employment of retired members of the uniformed services; reduction in retired or retainer pay) states:

a. For the purpose of this section, "period for which he receives pay" means the full calendar period for which a retired officer of a regular component of a uniformed service receives the pay of a position when employed on a full-time basis, but only the days for which he actually receives that pay when employed on a part-time or intermittent basis.

b. A retired officer of a regular component of a uniformed service who holds a position is entitled to receive the full pay of the position, but during the period for which he receives pay, his retired or retainer pay shall be reduced to an annual rate equal to the first \$2,000.00 of the retired or retainer pay plus one-half of the remainder, if any. In the operation of the formula for the reduction of retired or retainer pay under this subsection, the amount of \$2,000.00 shall be increased, from time to time, by appropriate percentage, in direct proportion to each increase in retired or retainer pay under section 1401a(b) of title 10 to reflect changes in the Consumer Price Index.

c. If any member or former member of a uniformed service is receiving retired or retainer pay and is employed in a position the annual rate of basic pay for which, when combined with the member's annual rate of retired or retainer pay (reduced as provided

under subsection (b) of this section), exceeds the rate of basic pay then currently paid for level V of the Executive Schedule, such member's retired or retainer pay shall be reduced by an amount computed under paragraph (2) of this subsection. The amounts of the reductions shall be deposited to the general fund of the Treasury of the United States.

d. The amount of each reduction under paragraph (1) of this subsection allocable for any pay period in connection with employment in a position shall be equal to the retired or retainer pay allocable to the pay period (reduced as provided under subsection (b) of this section), except that the amount of the reduction may not result in-

(A) the amount of retired or retainer pay allocable to the pay period after being reduced, when combined with the basic pay for the employment during the pay period, being at a rate less than the rate of basic pay then currently paid for level V of the Executive Schedule; or

(B) the amount of retired pay or retainer pay being reduced to an amount less than the amount deducted from the retired or retainer pay as a result of participation in any survivor's benefits in connection with the retired or retainer pay or veterans insurance programs.

e. The reduction in retired or retainer pay required by this section does not apply to a member or former member of a uniformed service who is receiving retired or retainer pay-

(1) Whose retired or retainer pay is computed, in whole or in part, based on disability-(A) resulting from injury or disease received in line of duty as a direct result of armed conflict; or (B) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38; or

(2) Employed on a temporary (full-time or part-time) basis, any other part-time basis, or an intermittent basis, for the first 30-day period for which he receives pay.

f. The exemption from reduction in retired or retainer pay under paragraph (2) of this subsection does not apply longer than-

(1) The first 30-day period for which he receives pay under one appointment from the position in which he is employed, if he is serving under not more than one appointment; and

(2) The first period for which he receives pay under more than one appointment, in a fiscal year, which consists in the aggregate of 30 days, from all positions in which he is employed, if he is serving under more than one appointment in that fiscal year.

//NOTHING FOLLOWS//