

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2025

DOCKET NUMBER: AR20240009855

APPLICANT REQUESTS:

- remission/cancellation of indebtedness for the overpayment of:
 - Basic Allowance for Housing (BAH)
 - Cost of Living Allowance (COLA)
 - Basic Allowance for Subsistence (BAS)
 - Overseas Housing Allowance (OHA)
- reimbursement of monies paid towards the indebtedness since April 2019
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Health – Demographic Registry Certification of Marriage/Divorce
- Popular Bank letter

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 the Defense Finance and Accounting Service (DFAS) is claiming that he was overpaid for military pay and allowances which is an erroneous statement. He was justly paid his pay and entitlements, but he has deductions being taken from his pay. He was married to his former spouse on 17 July 2007 and their marriage was terminated by a divorce on 12 December 2017 which entitles him to BAS and COLA entitlements. He had a mortgage for his residence during the period of 1 October 2013 through 22 September 2022 which entitled him to BAH and OHA entitlements.

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

- a. On 5 January 1994, the applicant enlisted in the Regular Army (RA).
- b. On 9 May 1996, the applicant was honorably released from active duty for a hardship and assigned to the U.S. Army Reserve (USAR) Control Group (Annual Training).
- c. On 1 April 1998 the applicant enlisted in the RA.
- d. On 7 April 1998, Orders Number C-04-811212, issued by the USAR Personnel Command, the applicant was assigned to a USAR Troop Program Unit (TPU), effective 1 April 1998.
- e. On 24 September 2001, Orders Number R-09-106041, issued by the USAR Personnel Command, the applicant was ordered to active duty in an Active Guard/Reserve status, effective 29 October 2001.
- f. On 5 October 2001, the applicant enlisted in the USAR and had continuous service through extensions or reenlistments.
- g. On 7 October 2001, the applicant was honorably released from active duty and assigned to a USAR TPU.
- h. On 16 May 2005, Orders Number R-05-575452, issued by the U.S. Army Human Resources Command (AHRC), the applicant was released from active duty and discharged for an immediate reenlistment in the USAR, effective 12 May 2005 in an AGR status.
- i. On 13 May 2013, the applicant requested Continental U.S. COLA for the zip code of 19044, effective 23 April 2012 with five dependents.
- j. On 22 May 2013, Orders Number R-05-383781, issued by AHRC, the applicant was assigned to a USAR TPU in Puerto Rico, effective 15 July 2013. The additional instructions stated that dependent travel to the new duty station was authorized, and concurrent travel of his dependents was authorized. The orders listed his dependents as his spouse and five children.
- k. On 27 March 2015, the commander of the 210th Regional Support Group issued the applicant a reprimand for being absent without leave (AWOL) on 26 August 2013 and 14 through 17 November 2014 which the applicant acknowledged on 13 April 2015.

l. On 15 July 2016, the informal Physical Evaluation Board (PEB) found the applicant physically unfit for retention and recommended he be placed on the permanent disability retired list with 40 percent disability. The applicant concurred with the findings of the PEB and waived a formal hearing.

m. On 20 June 2018, Orders Number C-06-807417, issued by AHRC, the applicant was released for attachment to his USAR TPU in Puerto Rico for separation processing which was scheduled for 22 July 2018.

n. On 20 June 2018, the applicant requested permissive temporary duty or excess leave during the period of 3 July through 22 July 2018 in Jacksonville, FL.

o. On 27 July 2018, the applicant requested transition leave during the period of 23 July through 30 August 2018 in Jacksonville, FL.

p. The applicant's service record was void of the original orders; however, on 1 August 2018, Orders Number C-06-895167A01 amended the original orders to show the applicant's date of separation was changed to 30 August 2018 and he was placed on the retired list on 31 August 2018.

q. On 24 August 2018, Orders Number R-04-70164A03, issued by AHRC, amended the original orders to change the date of eligibility to return from overseas to 30 August 2018.

r. On 30 August 2018, the applicant was honorably retired and assigned to the USAR Control Group (Retired Reserve). DD Form 214 shows the applicant completed 16-years, 10-months, and 13-days of active service. It also shows the applicant had lost time during the period of 14 through 17 November 2014.

4. The applicant provides:

a. Department of Health – Demographic Registry Certification of Marriage which shows the applicant married M-M- on 10 July 2007 in Puerto Rico by a judge. Their marriage was dissolved through a divorce in Puerto Rico on 12 December 2017.

b. Popular Bank letter dated 23 February 2024 which stated the applicant had a mortgage loan with their banking institution which originated on 1 October 2013 and was cancelled on 22 September 2022.

5. During the processing of this case the DFAS provided documents regarding the applicant's indebtedness which shows his original debt was in the amount of \$52,201.80 plus \$2,317.53 in interest, fines, and penalties with a collection in the amount of \$30,268.38 for a debt balance of \$24,250.95.

On 28 February 2019, DFAS notified the applicant of his indebtedness in the amount of \$52,201.80 for the overpayment of military pay and allowances related to entitlements:

- a. BAQ or BAH the period of:
 - 26 August 2013
 - 14 through 17 November 2014
 - 1 January through 30 December 2017
 - 1 June through 30 August 2018
- b. OHA the period of:
 - 26 August 2013
 - 14 through 17 November 2014
 - 1 January through 30 December 2017
- c. BAS the period of:
 - 26 August 2013
 - 14 through 17 November 2014

The applicant filed a claim for hardship to make payments on the indebtedness stating his mental condition and physical limitation made it difficult to find suitable employment. On 21 June 2019, DFAS denied his request for financial hardship to apply for a reduced payment plan because the indebtedness payments were being deducted from the retired pay.

6. On 26 February 2025, in the processing of this case, the Deputy Chief of Staff G1 provided an advisory opinion regarding the applicant's request for remission or cancellation of his indebtedness. The advisory official recommended disapproval of his request. The Army investigated offenses committed by the applicant during his military service, he was found guilty, and the debts were posted for the periods of the offenses. Additionally, the applicant was AWOL for 4-days which increased his debt.

7. The applicant's service record is void of the investigation and the administrative separation action.

8. On 28 February 2025, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment.

9. On 13 March 2025, the applicant responded to the advisory opinion and stated:

a. Entitlement to Basic Allowance for Quarters (BAQ), Overseas Housing Allowance (OHA), and Cost of Living Allowance (COLA) at the Dependent Rate. The alleged debt is attributed to an overpayment of BAQ, OHA, and COLA for the following periods:

- 26 August 2013 – 26 August 2013
- 14 November 2014 – 17 November 2014
- 1 January 2017 – 30 December 2017
- 1 June 2018 – 30 August 2018

b. Per DoD Financial Management Regulation (FMR) Volume 7 A, Chapter 26, service members are entitled to BAQ, OHA, and COLA at the dependent rate if they meet the eligibility requirements, including having a lawful dependent. He has attached his marriage certificate, which demonstrates my entitlement to these allowances at the dependent rate from 10 July 2007, through 22 December 2017. These payments were legally authorized, and therefore, the alleged overpayment is incorrect. He should not be held liable for repayment of allowances that were properly disbursed under existing regulations. Mortgage documentation supporting BAQ and OHA eligibility Additionally, he has enclosed a Mortgage Letter from his bank, which confirms his home purchase on 1 October 2013, through 22 September 2022. This documentation serves as proof that he maintained an eligible housing arrangement and was entitled to receive BAQ and OHA during his period of active service.

c. During the period 1 January 2017, through 30 December 2017, his BAQ and OHA allowances were erroneously withheld, despite his continued service. This timeframe also includes his active duty assignment during Hurricane Maria (20 September 2017), during which he was engaged in official disaster relief efforts. It is unjust to penalize him by assessing a debt for a period when he was actively serving in an emergency capacity. As per DoD FMR Volume 7A, Chapter 68, service members engaged in contingency operations or emergency response duties are entitled to their authorized allowances.

d. Regarding the alleged AWOL-related debt, the claim that he was absent for four days without proper authorization has no legal basis, as no Uniform Code of Military Justice action was taken, nor is there any record of an AWOL status in his official personnel file. Furthermore, based on standard pay calculations, four days of AWOL would only justify a repayment of \$1,128.88, not the excessive amount of \$52,246.90 that has already been withheld and for which he is currently making monthly payments. As for the, "found guilty." He has already repaid \$19,000.00 in restitution to the federal government through direct debit from his military pension to the Department of Justice. Per DoD FMR Volume 16, Chapter 3, once a debt has been settled, no further collections should be pursued unless explicitly authorized by the appropriate review authority. He requests that his payments be reconciled accordingly.

e. The remainder of the applicant's rebuttal can be viewed by the Board in the supporting documents.

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 correspondence received from DFAS concerning the applicant's debt and the initial actions of the applicant at the time of receiving that DFAS correspondence (requesting modified payment plans, etc), the Board concluded by a preponderance of the evidence that the applicant had proper knowledge of the debt and the debt was being properly collected. The Board found no evidence of an error or injustice warranting the requested relief.

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 (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 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 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.

//NOTHING FOLLOWS//