

In the United States Court of Federal Claims

MICHAEL J. FORBES, *pro se.**Plaintiff,*

v.

THE UNITED STATES

Defendant.

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No. 1:2024-cv-01953

SECOND AMENDMENT
TO COMPLAINT

This 3th day of October, 2025

COMPLAINT

1. The basis for this Court’s jurisdiction is the Tucker Act. *See 28 U.S.C. § 1491*. The nature of the suit is “money-mandating” under the Military Pay Act as it relates to the relief requested to make the Plaintiff whole, e.g., back pay, CHAMPUS, corrected records, correct/reinstate, reinstatement, retirement, and SBP, et. al. *See 37 U.S.C. § 204(a)*.¹ All claims herein furthered the wrongful termination of the Plaintiff. The US Court of Appeals for the Federal Circuit has held that veteran service member claims for benefits or entitlements lost (to otherwise make a Plaintiff ‘whole’) are within the Tucker Act’s ambit. *See Martinez v. United States*, 333 F.3d 1295, 1303–04 (Fed. Cir. 2003) (citing *Richey v. United States*, 322 F.3d 1317, 1325 (Fed. Cir. 2003); *Heisig v. United States*, 719 F.2d 1153, 1155 (Fed. Cir. 1983) and *United States v. Kelly*, 82 U.S. 34 (1872)). The Plaintiff suffered a legal wrong, and has been harmed by agency action and a failure to follow its own procedures, which brings into scope judicial review under the Military Pay Act and the Administrative Procedure Act (APA).² The damages claimed far exceed \$10,000 which gives the Court of Federal Claims exclusive jurisdiction. *See Randall*, 95 F.3d at 347: 28 U.S.C. § 1491. All violations of regulations are claimed as of the regulation version in effect at the time of the violation.
2. The Plaintiff was a Tenured, Senior Non-commissioned Officer and was selected for promotion to Master Sergeant on January 19, 2023 while dutifully serving his final, indefinite contract having served 17 year and 9 months with an unblemished service record in the United States Army. He was subsequently ‘expeditiously discharged’ and wrongfully terminated under Ch. 16 of AR 635-200 (specifically, 16-11) with the separation code “JPH”

¹ Nature-of-Suit codes are derived from the Court of Federal Claims Form 2 and are as follows: 340, 342, 344, 346, 348, 352 and 354.

² *See* 5 U.S.C. §§ 701-706. Please note that the US Army meets the definition of an “agency” under 5. U.S.C. § 701.

and stated reason of “Non-Retention on Active Duty;” that said, the Defendant provided him, with an honorable discharge, a 6th Good Conduct Medal for the most recent period served, and provided him an unearned Coast Guard Good Conduct Medal [ECF 19-2 at 001136, box 13.]. The claims below indicate the Defendant wanted the Plaintiff ‘separated at all costs.’

3. This Court may award Plaintiff’s declaratory and injunctive relief pursuant to the Declaratory Judgment Act, and this Court’s inherent equitable jurisdiction. *See 28 U.S.C. § 2201.*

CLAIMS

4. On December 29, 2022, the Plaintiff was harmed by a direct order from the Defendant (through one of the Plaintiff’s Commanders and an active duty Psychologist) when it ordered the Plaintiff to become a client of an online third-party without lawful, procedural and mandated safeguards, which conflicted with an Executive Order, federal statutes, and its own regulations, et. al. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233, DoD 5400.11-R, DoDI 5400.11, AR 25-22, AR 25-98, and AR 70-25, as well as Executive Orders M-10-22, and M-10-23.*
5. The Plaintiff was harmed by arbitrary and capricious decisions to launch 15-6 investigations (on January 12, 2023 and February 9, 2023) that were unsupported by substantial evidence, and moreover, the Plaintiff was harmed by these investigations because he was denied the opportunity to respond to questioning with evidence of ‘greater weight’ or his ‘side of the story,’ which contrasts with the rights afforded field grade officers. This violates Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, and AR 15-6.*
6. The tenured and contracted Plaintiff was harmed by being denied any formal notice and an objective venue (e.g., a pretermination hearing) such as a Chapter 2 (AR 635-200) Administrative Separation Board, through which he could present the Special Defense to the Article 89, “disrespect toward a superior commissioned officer” charge or defend the contrived, retaliatory, and unsupported counterproductivity charge, both of which he was informally (administratively) deemed guilty. The Plaintiff neither received a fair opportunity, before discharge, to produce contrary records or testimony, nor to confront an accuser in front of the decision-maker. This violated of the Administrative Procedure Act of 1975 and the Uniform Code of Military Justice. *See 5 U.S.C. §§ 551-559, 10 U.S.C. § 47, 10 U.S.C. § 7233, AR 600-20 and AR 635-200.*
7. The Plaintiff was harmed in the February 9, 2023 investigation when he was named (in retaliation) as a possible suspect and informally deemed guilty in an Inspector General complaint, the same complaint that he made on December 13, 2022, a day after the Plaintiff alleged being assaulted. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, and AR 20-1.*

8. On November 30, 2022, the Plaintiff was harmed when the Inspector General did not follow its own procedures when it received the Plaintiff's Inspector General Assistance Request (IGAR). This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, AR 20-1, and the US Army Inspector General School, "The Assistance and Investigations Guide," Section 2-2-2.*
9. On November 30, 2023, the Plaintiff was harmed when the Defendant failed to assert "discretion, fairness and sound judgment" of its "disciplinary powers," after being presented with an extensive *prima facie* rebuttal and Article 138 redress requests to have the Plaintiff's General Officer Memorandum of Reprimand, and Relief for Cause Noncommissioned Officer Evaluation Report removed from his record and/or rescinded in their entirety. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233, 10 U.S.C. § 938 and AR 600-20.*
10. The Plaintiff was harmed when he was denied open-doors with the 1SFC and USASOC Generals that were requested via email on multiple dates in the Plaintiff's unrelenting attempts to remediate the escalating situation prior to and through the separation of the Plaintiff. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233, and AR 600-20.*
11. The Department of the Army Suitability Evaluation Board (DASEB), when presented with a request to rescind the Relief for Cause NCOER (within 6 months of the Plaintiff's separation on June 28, 2024) because the Plaintiff was not "afforded an opportunity to explain or rebut the unfavorable information," knowingly, willfully and deliberately would not correct the error / injustice and made its determination on January 24, 2025, after the Plaintiff was separated. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, and AR 600-37.*
12. The Plaintiff was harmed by the Army Special Review Board (ASRB) when it failed to prioritize or even consider the letter sent by retained legal counsel clearly referencing and stating the "rating officials were not objective," within 6 months of the Plaintiff's separation, on June 28, 2024, contesting the entire Relief for Cause NCOER as biased. There is, in fact, no record that the ASRB ever considered the Plaintiff's request as required by law and regulation. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, and AR 623-3.*
13. As a tenured service member, the Plaintiff was denied a formal, objective venue to state his stance, Special Defense, or 'side of the story' through a formal administrative hearing, a non-judicial punishment hearing or even in a court-martial prosecution. This violated the Administrative Procedure Act of 1975, et. al., and the Uniform Code of Military Justice. *See*

5 U.S.C. §§ 551-559, 10 U.S.C. § 47, AR 635-200 and AR 27-10, as well as the *Manual for Courts Martial*, 2022.

14. As a tenured service member, the Plaintiff was harmed via the arbitrary and capricious denial of a formal Chapter 2 (see AR 635-200), Administrative Separation Board, and was instead separated via the informal Chapter 16-11, Qualitative Management Program board, under the characterization of the separation of service code “JGH” – “expeditious discharge” (see ECF 19-2, 001701). This violated the Administrative Procedure Act of 1975, et. al., in relation to the Defendant’s historical interpretation of 10 U.S.C. § 1169. See 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233, and 10 U.S.C. § 1169.
15. On November 13, and 26, 2024, two different members of the Defendant (in the Plaintiff’s Chain of Command) harmed the Plaintiff when they identically denied his request for extension for the Defendant to comply with its own regulation. This violated the Administrative Procedure Act of 1975, et. al. See 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233, AR 600-20, AR 635-200, and AR 635-8.
16. As a tenured service member, the Plaintiff was harmed via the arbitrary and capricious option of the informal Ch. 16-11 separation, entitled “Enlisted Qualitative Management Program;” its prohibitions created and listed below, coupled with the a lack of the self-purported “complete due process” quoted below caused this harm (see AR 635-200, Ch. 16-11):

The provisions of this regulation pertinent to counseling and rehabilitative transfer (see para 1–17), notification of separation recommendation (see chap 2, sec I), and a hearing before an administrative separation board do not apply to involuntary discharge resulting from QMP selection (see chap 2, sec II)....; (para. b., (10))

Personal appearance before an NCO evaluation board is not authorized....; (para. g.)

Correspondence that criticizes or reflects on the character, conduct, or motives of any other Soldier will not be provided to the board....; (para. g., (2))

A determination of denial of continued active service stemming from the QMP process is final. There are no appeal provisions because every NCO will be afforded complete due process prior to the NCO evaluation board convene date and consideration for continued active service.... (para. b., (8))

These two separate separation decision-boards’ coexistence (as implemented since at least 2012) have impacted thousands and are contrary to law as the informal prohibitions above conflict with the long-standing, established, as well as, concurrent use of the formal provisions of an Administrative Separation Board (under Ch. 2 of the same regulation), which “entitled [the Plaintiff] to a hearing before an (sic) administrative board if you [the Plaintiff] have 6 or more years of active ... service at the time of separation.” See AR 635-200, Figure 2-1, pg. 38. This violated of the Administrative Procedure Act of 1975, et. al..

See 5 U.S.C. §§ 551-559, 10 U.S.C. § 1169, 10 U.S.C. § 7233, DoDI 1332.14, AR 600-20, and AR 635-200.

17. The “active duty” Plaintiff was harmed via the denial of future entitlements by the Defendant’s intent to separate him without proper cause “at all costs,” which resulted in the Plaintiff’s being wrongfully terminated on November 30, 2024. This violates the Administrative Procedure Act of 1975, et. al., and the Military Pay Act. *See 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233 and 37 U.S.C. § 204(a).*
18. The Plaintiff’s wife was harmed via the denial of future entitlements by the Defendant’s wrongful separation of the Plaintiff “at all costs” which resulted in the Plaintiff being wrongfully terminated on November 20, 2024. This violates the Administrative Procedure Act of 1975, et. Al., and the Military Pay Act. *See 5 U.S.C. §§ 551-559 and 37 U.S.C. § 204(a).*
19. The Plaintiff was harmed by a Defendant Commander’s failure to “comply with AR 635-8” (*see AR 635-200, Ch. 1-21., a.*) and “ensure Soldiers report as required for the Pre-Separation Services Program. Provide transportation if necessary.... (*see AR 635-200, Ch. 4-3., b.*) “at least 120 days prior to separation date (*see AR 635-200, Ch. 4-3., a.*)” This violates the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, DoDI 1332.14, AR 635-8 and AR 635-200.*
20. The Department of the Army (DOA) and the Department of Defense (DoD) illegally terminated the Plaintiff’s active duty service on November 30, 2024, approximately 42 months prior to the expiration term of service (ETS) date of April 30, 2028, without cause. This action breached the contract signed on January 16, 2020 and violated the Administrative Procedure Act of 1975, et. Al., and the Military Pay Act. *See 5 U.S.C. §§ 551-559 and 37 U.S.C. § 204(a) and 10 U.S.C. 1169. [See ECF 19-2 at 001335 – 001340] .*
21. The Secretary of the Army harmed the Plaintiff by ignoring her “responsibilities” upon notification by the Plaintiff’s wife of retaliation and the Defendant subsequently added his wife’s letter to the Plaintiff’s permanent AMHRR file. This violates the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, and DoDI 1332.14*
22. The Plaintiff was harmed by receiving, a “limited medical exam due to separation time line” [ECF 27-2 at 96 & 98] and/or receiving no assistance to enroll in the health care system of the Department of Veterans Affairs, during his “expeditious discharge” separation. This violated the Administrative Procedure Act of 1975, et. al. *See 5 U.S.C. §§ 551-559, 10 U.S.C. § 1145, AR 40–501, AR 635-40, AR 600-20, and AR 635-200.*
23. In the morning of January 18, 2023, the Plaintiff requested (in-person) an open-door meeting with the 1SFC General and was, instead, redirected and scheduled to meet with Command Sergeant Major on the following day (January 19th). Later, on the 18th, at circa 6 p.m. the Plaintiff was involuntarily hospitalized after he was deemed 'erratic' and ordered/escorted to

a retaliatory, after-hours, emergency, Command-Directed Behavior Health Evaluation (eCDBHE that was approved by the same “[in]appropriate” Psychologist who had a prior charge of ‘disrespecting an officer’ levied against the Plaintiff). These arbitrary and capricious decisions exacerbated the causal conflict-of-interest decisions that occurred on November 29 and 30, 2022 that ultimately resulted in the Plaintiff’s wrongful separation. All of this occurred while the Plaintiff was an unwitting suspect (not flagged) in a 15-6 investigation. These actions violated the Administrative Procedure Act of 1975, et. al. *See* 5 U.S.C. §§ 551-559, 10 U.S.C. § 7233, DoDD 6490.1 and DoDI 6490.04, AR 600-20, MEDCOM Reg 40-38, and AR 15-6.

24. The Plaintiff was harmed by the Defendant’s failure to appropriately investigate the Plaintiff being assaulted by his Battalion Command Sergeant Major during the morning formation on December 12, 2022. This violated the Administrative Procedure Act of 1975, et. al. *See* 5 U.S.C. §§ 551-559, and AR 195-2.
25. Previous, and subsequent, Plaintiff filings, have, and will, support the cogent and clearly convincing evidence that the Defendant acted arbitrarily, capriciously, contrary to law, and/or that its determinations in support of the separation of the tenured Plaintiff from his contracted service were unsupported by substantial evidence and thereby wrongful and served only to expeditiously separate the Plaintiff at all costs. Injustices such as this one are designed to be funneled to ABCRM have become routine via the establishment and implementation of the QMP in its current form.

RELIEF REQUESTED

26. As this is an amended complaint in the same case, the Plaintiff only notes that ‘making him whole’ also applies to his wife as she lost medical and survivor benefit coverage that she would have had if the Plaintiff had not been wrongfully separated and the Plaintiff reaffirms all prior stated relief in ECF 5 to save the Court needless duplication. Injustices such as this are being made routine.

October 3, 2025

Date

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Signature of Plaintiff

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