

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 October 2023

DOCKET NUMBER: AR20220009893

APPLICANT REQUESTS approval of his eligibility for a closed year (CY) final payment of his Warrant Officer Accession Bonus (WOAB) in the amount of \$2,222.22 in the Georgia Army National Guard (GAARNG).

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

- DD Form 149 (Application for Correction of Military Record)
- Determination of Eligibility memorandum, 24 August 2015
- State Appointment Orders 272-988, 30 September 2015
- NGB Form 337, Oaths of Office, 30 September 2015
- Written Agreement – Warrant Officer Accession Bonus
- Orders to Full Time National Guard Duty, 15 June 2016
- DA Form 71, Oath of Office, 30 September 2015
- DA Form 1059 (Service School Academic Evaluation Report)
- Notification of Incentive Discrepancy and Exception to Policy Process, 19 March 2021

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 is requesting final payment/Exception to Policy (ETP) regarding a discrepancy with his bonus contract as outlined below referencing the Notification letter (attached) dated 19 March 2021: (a) Incentive Type(S): OWA-Warrant Officer Accession Bonus; (b) Final Payment: \$2,222.22; and (c) Reason for the Discrepancy: Accepted AGR (Active Guard Reserve). He was informed by G-1 that, his ETP/termination of incentive due to becoming AGR wasn't processed for final payout last year as requested because of GIMS going down. They didn't get an approved process for ETP processing until late September/October 2021. By this time, it was already too late. He was advised, that, any incentive that is beyond five years old is

required to have ABCMR approval to be processed since it comes out of a closed year fund.

3. Review of the applicant's service records shows:

a. He enlisted in the Georgia Army National Guard (GAARNG) on 12 April 2008, holding military occupational specialty 92A, Automated Logistical Specialist. He served through multiple extensions, in a variety of assignments, including active duty mobilization.

b. He was honorably discharged from the ARNG on 29 September 2015 for appointment as a commissioned or warrant officer. His NGB Form 22 (Report of Separation and Record of Service) shows completion of 7 years, 5 months, and 18 days of ARNG service.

c. On 16 September 2015, he signed a Written Agreement – Warrant Officer Affiliation Bonus. He accepted a commission and agreed to serve in the ARNG as a Warrant Officer (WO) with entitlement to the WOAB under the current Fiscal Year (FY) ARNG Selective Reserve Incentives Program (SRIP).

(1) He agreed to access for 6 years in an active status upon commissioning and understood he must not be accepting a commission in the ARNG for the purpose of qualifying for an Active Guard and Reserve (AGR) position or a Military Technician (MilTech) position where membership in a Reserve Component (RC) is a condition of employment (one-time temporary assignment as a MilTech under 180 days in a continuous 12-month period is excluded).

(2) He agreed to serve satisfactorily, as prescribed by the appropriate regulations of the ARNG, for the entire period in the ARNG in the critical MOS: 920B (Supply Systems Technician) unless excused for the convenience of the government for 6-years in an active drilling status (not AGR or a MilTech).

(3) He is being commissioned into an ARNG for the Warrant Officer Accession Bonus (WO Critical MOS List and receive a bonus in the amount of \$20,000 less taxes. The payment will be made in two installments. The first 50% installment will be processed within 180-days after completion of WOBC in his WOAB MOS and verification of his critical MOS qualification in GIMS. He must complete WOBC within 24 months from date of commissioning. The second 50% installment will be processed within 180 days of the 4th year anniversary of the contract start date.

d. He was appointed as a Reserve warrant officer of the GAARNG and executed an oath of office on 30 September 2015.

e. He completed the Supply Systems Technician Warrant Officer Basic Course, 920B, from 5 October 2015 to 19 November 2015.

f. On 16 June 2016, State of Georgia published Orders 167-816 ordering him to Full Time National Guard Duty (FTNGD) in Active Guard/Reserve (AGR) status, with his consent, for an active duty commitment from 16 June 2016 to 15 June 2019. The purpose of this FTNGD: Entering the AGR Program to serve as Property Book Officer, 920A.

g. On 23 June 2016, The Adjutant General, GAARNG published Orders 175-826 awarding him military occupational specialty (MOS) 920B, Supply Systems Technician.

h. He completed the Property Accounting Technician Course WO Basic Course (920A) from 3 January to 3 March 2017.

i. On 16 June 2017, The Adjutant General, GAARNG published Orders 175-826 awarding him MOS 920A, Property Accounting Technician.

j. On 5 February 2018, by memorandum, Subject: Notification of Incentive Discrepancy and Exception to Policy Process, GAARNG informed the applicant that a discrepancy has been discovered with his bonus contract that must be resolved to avoid eligibility termination.

(1) The Incentive Manager has taken all measures possible prior to notification; however, they could not resolve the issue without his assistance. His information regarding this discrepancy is as follows:

- Incentive Type(s): Warrant Officer Accession Bonus
- Recoupment Amount:\$0.00
- Reason for the Discrepancy: Became AGR

(2) They have determined that he may be eligible for an Exception to Policy. If he intends to submit an Exception to Policy, he must submit an Exception to Policy Request to the State Incentive Manager within 45 days from the date of this correspondence.

k. On 19 March 2021, by memorandum, Subject: Notification of Incentive Discrepancy and Exception to Policy Process, GAARNG informed the applicant that a discrepancy has been discovered with his bonus contract that must be resolved to avoid eligibility termination.

(1) The Incentive Manager has taken all measures possible prior to notification; however, they could not resolve the issue without his assistance. His information regarding this discrepancy is as follows:

- Incentive Type(s): Warrant Officer Accession Bonus
- Final Payment: \$2,222.22
- Reason for the Discrepancy: Accepted AGR

(2) They have determined that he may be eligible for an Exception to Policy. If he intends to submit an Exception to Policy, he must submit an Exception to Policy Request to the State Incentive Manager within 45 days from the date of this correspondence.

(3) Requests for Exception to Policy must be detailed in nature and contain copies of service and incentive documentation. For specific guidance and assistance regarding Exception to Policy preparation, he could contact his Unit Readiness NCO, Battalion Career Counselor, or State Incentive Manager.

4. On 19 September 2023, the NGB provided an advisory opinion in the processing of this case. An NGB official reiterated the applicant's request for approval of his eligibility for a closed year (CY) payment of his warrant officer accession bonus (WOAB) payment. The NGB official recommended approval and stated:

a. Due to accepting an Active Guard Reserve (AGR) position, Soldier reports he submitted an exception to policy (ETP) request for the final payment of his WOAB in the amount of \$ 2,222.22. He informs that, according to his State, his ETP request was processed late due to the Guard Incentive Management System (GIMS) malfunction at the time. Soldier notes that because his request was approved late, his incentive payment fell outside of the five-year statute of limitation requirement. As a result, Soldier indicates he was advised to seek relief from the ABCMR to receive his final bonus payment.

b. In connection with his appointment in the Georgia Army National Guard (GAARNG), Soldier signed a WOAB addendum in MOS 920A for a total amount of \$20,000 effective 16 September 2015. According to the agreement, Soldier would receive the first half payment of his incentive within 180 days after completion of the Warrant Officer Basic Course (WOBC). The second half, on the other hand, would be issued within 180 days of the 4th year anniversary of his contract start date. On 19 November 2015, Soldier completed the 920B Supply Systems Technician WO course and therefore became MOS qualified. On 16 June 2016, Soldier was accessed in the AGR program resulting in his initial MOS being changed to 920B. Consequently, he received a notification of incentive discrepancy and ETP on 28 February 2018, which he acknowledged via a response to the said notice on 1 March 2018. Thereafter, Soldier

successfully completed his 920A, Property Accounting Technician WOBC on 3 March 2017.

c. Section VI of the signed addendum outlines numerous reasons that can lead to the termination of the WOAB. On the other hand, 31 U.S.C. § 3702(e) provides the statute of limitation for claims involving a uniformed service member (SM).

(1) Under Para 5b., the incentive may be terminated upon failure to complete WOBC in the designated MOS within 24 months from the date of commission. Besides, according to Para 5c., termination without recoupment is required upon accepting an AGR position that exceeds 180 days.

(2) Under the provisions of 31 USC 3702(b) the Barring Act, jurisdiction to consider claims is limited to those that are filed within six years after they accrue. However, IAW 31 U.S.C. § 3702(e), upon request of the Secretary concerned, the Secretary of Defense may waive the time limitations established by the Barring Act for claims involving a uniformed SM's pay, allowances, or survivor benefits, to allow payment of the claim up to \$25,000.00.

d. Soldier violated the terms of his WOAB addendum by accepting an AGR position. Furthermore, he changed his designated MOS (920A) to 920B for the purpose of his AGR position. Therefore, his incentive should be terminated as a result. Nevertheless, it should be noted that despite changing his MOS, Soldier continues to serve in a 920 related MOS known as the supply career field. To this, it should also be added that he served nearly a year under this incentive contract prior to his AGR accession. In addition, Soldier successfully completed his WOBC within the prescribed timeframe from the date of his commission. Consequently, he should be entitled to the full amount of the first payment of his incentive. However, due to the contract payment being greater than 6 years, an ABCMR approval is required to issue this payment.

e. Upon consultation with GAARNG about this matter, the State Incentives and Education office determined that Soldier was eligible to receive the first payment of his bonus of \$10,000. Meanwhile, it opined that the incentive was rightfully terminated due to not serving the entire contracted period in the MOS he signed and for voluntarily changing his MOS. Conversely, the State does not have any account of a final payment in the amount of \$2,222.22.

f. In conclusion, although Soldier violated the terms of his addendum, he successfully completed his WOBC requirement. Besides, he continues to serve in the supply career field and remains an asset for his organization. On a different note, however, it appears that the final payment of \$2,222.22 noted by the Soldier might have been determined in error. In view of all the above, this office recommends that Soldier be found eligible for a CY payment of his incentive.

g. This opinion was coordinated with the GAARNG and the Army National Guard Incentives Branch.

5. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit a rebuttal and/or additional comments. He did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant’s contentions, the military record, and regulatory guidance. The Board agreed that although the applicant violated the terms of his Warrant Officer Accession Bonus when he accepted an Active Guard Reserve position, he completed his WOBC requirement and continues to serve. After due consideration of the request, the Board determined that the evidence presented sufficient to warrant a recommendation for relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected to show he retained eligibility to receive the remaining portion of his Warrant Officer Accession Bonus as determined by the Georgia Army National Guard.

 Revoked certificate

X  _____




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. Office of the Deputy Chief of Staff, G-1 memorandum to Office of the Chief of Army Reserve and Army National Guard, Subject: Exception to Policy - Retention of Bonuses for Army Reserve (USAR) and Army National Guard (ARNG) Soldiers Accepting Active Guard and Reserve (AGR) Positions, dated 27 September 2018 states:

a. References: Department of Defense Instruction (DoDI) 1304.31, "Enlisted Bonus Program (EBP)," March 12, 2013; Army Regulation (AR) 601-210 (Regular Army and Reserve Components Enlistment Program), 31 August 2016; and Office of the Chief of Army Reserve (OCAR) Memorandum, subject: Request Exception to Policy (ETP) Requiring Termination of Incentive Pay for Army Reserve Troop Program Unit (TPU) Soldiers Accepting Active Guard Reserve (AGR) Positions, 11 June 2018.

b. As an exception to AR 601-210, paragraph 10-8a(4), Soldiers who receive an enlistment or reenlistment/extension bonus, and are later accepted into the AGR program, may retain their bonus provided one of the following criteria are met: (1) The Soldier is assigned to an AGR position with the same Military Occupational Specialty (MOS) for which the bonus was originally authorized; or (2) The Soldier continues to drill in the MOS for which the bonus was initially authorized if assigned to an AGR position that does not possess the same MOS.

c. Bonus limitations and all other qualifying criteria as outlined in references 1a. and 1b. of this memorandum must be met to maintain eligibility under this approval. This exception is approved for one year effective the date of this memorandum and may not be applied retroactively.

3. Title 31, U.S. Code, § 3702 - Authority to settle claims, states in:

a. Sub-paragraph (b)(A) a claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues except—(A) as provided in this chapter or another law; or (B) a claim of a State, the District of Columbia, or a territory or possession of the United States.

b. Sub-paragraph (e):

(1) The Secretary of Defense may waive the time limitations set forth in subsection (b) or (c) in the case of a claim referred to in subsection (a)(1)(A). In the case of a claim by or with respect to a member of the uniformed services who is not under the jurisdiction of the Secretary of a military department, such a waiver may be made only upon the request of the Secretary concerned (as defined in section 101 of title 37).

(2) Payment of a claim settled under subsection (a)(1)(A) shall be made from an appropriation that is available, for the fiscal year in which the payment is made, for the same purpose as the appropriation to which the obligation claimed would have been charged if the obligation had been timely paid, except that in the case of a claim for retired pay or survivor benefits, if the obligation claimed would have been paid from a trust fund if timely paid, the payment of the claim shall be made from that trust fund.

(3) This subsection does not apply to a claim in excess of \$25,000.

//NOTHING FOLLOWS//