

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2023

DOCKET NUMBER: AR20220011848

APPLICANT REQUESTS: payment of his Enlisted Affiliation Bonus (EAB) contract dated 17 March 2015 in the Army National Guard.

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

- DD Forms 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 17 March 2015
- DA Form 7249-R (Certificate and Acknowledgement of Service Requirements and Methods of Fulfillment for Individuals Enlisting or Transferring into Units of the Army National Guard (ARNG) Upon Release from Active Duty (REFRAD)/Discharge from Active Army Service) – Annex A, 17 March 2015
- National Guard Bureau (NGB) Form 600-7-4-R-E (Annex B to DD Form 4 – Enlisted Affiliation Bonus (EAB) Addendum – ARNG of the United States, 17 March 2015
- DA Form 5691-R (Request for Reserve Component Assignment Orders), 17 March 2015
- Email communication(s), 18 March 2019, 30 September 2020, 1 October 2020, and 8 October 2020
- Bonus Payment History Joint Uniform Pay System (JUMPS), 29 September 2022
- G-1 Directorate, [REDACTED] Army National Guard ([REDACTED] ARNG) letter, 18 October 2022
- [REDACTED] ARNG Office of the G-1 Memorandum, 18 October 2022
- Bonus History screenshots
- Military Technician (MilTech) History screenshots

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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:

a. He is requesting the correction and relief of a payment in the amount of \$10,000.00, pertaining to an EAB bonus during the contractual period from 11 August 2015 to 11 August 2018. As per EAB contract Bonus Control Number (BCN) A1503000XXX, he was eligible for a payment in the amount of \$10,000.00 on 12 August 2015.

b. He signed an incentive contract on 17 March 2015 for a total amount of \$10,000.00 pertaining to an affiliation with the [REDACTED] ARNG. The scheduled payment of the same was due on the 12 August 2015 and on 11 July 2016, the [REDACTED] ARNG found him eligible for payment.

c. On 25 August 2016, the payment was rejected by the Defense Finance and Accounting Service (DFAS) due to system error, then re-queued by the [REDACTED] ARNG to be submitted again. On 2 October 2016, he accepted a permanent MilTech position in the [REDACTED] ARNG violating his contract with the [REDACTED] ARNG. If he was paid the amount owed of \$10,000.00, the contract would be terminated without recoupment. The Guard Incentive Management System (GIMS) read the payment could not be made due to this error, even though a prorated amount was owed. Currently, his incentive will be terminated due to close year. If termination would have been completed by the date of the violation, he would have received the amount of \$10,000.00. Letters of notification have been sent to him by the [REDACTED] ARNG personnel and were uploaded in the system to the ABCMR web page by him.

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

a. On 11 August 2011, he enlisted in the Regular Army.

b. On 26 February 2015, Headquarters, U.S. Army Garrison Fort Bragg, published Orders Number 057-0263, assigning the applicant to the transition point with a report date of 27 February 2015, and a date of release from active duty on 10 August 2015.

c. On 17 March 2015, a DD Form 4 shows he enlisted in the [REDACTED] ARNG for a period of 3 years. In connection with his enlistment, the applicant completed and signed a contract for an EAB (Enlisted Affiliation Bonus) NGB Form 600-7-4-R-E states, in pertinent part:

(1) Section II (Eligibility) – The applicant must not be affiliating in the ARNG for the purpose of qualifying for an Active Guard/Reserve (AGR) position or a 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) Section III (Bonus Amount and Payments) – The applicant was affiliating into the ARNG for the Three-Year Critical Skill (CS) Duty Military Occupational Specialty (MOS) Qualified (DMOSQ) 15T (UH-60 Helicopter Repairer) EAB and would receive a lump-sum payment in the amount of \$10,000.00 less taxes. The EAB would be processed within 180 days after his affiliation into the ARNG, reporting to his unit of assignment and verification of his critical EAB unit identification code/MOS qualification in GIMS to include meeting the physical requirements for his EAB MOS.

(3) Section V (Continued Receipt) – The applicant would be eligible for continued receipt of his EAB if he accepts a MilTech position on a temporary assignment tour for less than 180-days in any continuous 12-month period.

(4) Section VI (Termination) – The applicant may be terminated from his EAB eligibility without recoupment if he accepts an AGR, Permanent/Indefinite MilTech position (Includes Temporary MilTech position that exceeds 180-days within a continuous 12-month period) where membership in a RC is a condition of employment and have served more than 1-day past his EAB contract start date. The effective date of termination is 1 day prior to his AGR or MilTech position start date.

d. On 10 August 2015, DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was honorably released from active duty and transferred to his ■■■ ARNG unit. He completed 4 years net active service. Item 11 (Primary Specialty) shows 15T.

e. NGB Form 23A (ARNG Current Annual Statement) date prepared 23 February 2023 shows the applicant began his enlistment in the ■■■ ARNG on 11 August 2015 and earned a total of 12 years creditable service for retired pay.

4. The applicant provides:

a. DA Form 7249-R dated 17 March 2015, showing he completed an Annex A and the only addendum authorized was NGB Form 600-7-4-R, Affiliation Bonus – ARNG.

b. DA Form 5691-R dated 17 March 2015, which shows, upon completion of his active service he voluntarily accepted an assignment to his ■■■ ARNG unit.

c. Email communication(s) dated 18 March 2019, 30 September 2020, 1 October 2020, and 8 October 2020, between the applicant, ■■■ ARNG, and NGB discussing his EAB payment, termination, DFAS correction and resubmission, and the entitlement date was before the date of affiliation in "DJMS," so the payment kept rejecting. The applicant signed an EAB on 17 March 2015 in the amount of \$10,000.00 and became a MilTech on 26 July 2016. The EAB was a lump-sum that was never paid after his 180 days that he reported to his ■■■ ARNG unit. A termination was done, and

the system calculated he was owed \$3,055.56 from his EAB. The applicant should be terminated without recoupment effective day 180 of his temporary MilTech tour.

d. Bonus Payment History – JUMPS dated 29 September 2022, which shows the applicant received no payments.

e. G-1 Directorate, ■■■ ARNG letter dated 18 October 2022, notifying the applicant and his chain of command that, the applicant's EAB contract required termination. As per the applicant's contract, the incentive may or may not be subject to recoupment. Please see incentive contract for details. The reason for termination was based on "Accepted Civilian Position/Assigned to AD/AGR/Miltech." Termination effective date: 1 October 2016 and Bonus Amount: \$10,000.00.

f. ■■■ ARNG, Office of the G-1 Memorandum dated 18 October 2022, notifying the applicant that, a recent audit of unpaid incentives indicated that he might be entitled to a previously earned enlisted bonus payment. If he believed he was entitled to this incentive, he may submit a packet to the Army Review Boards Agency in accordance with the Barring Act. EAB in the amount of \$10,000.00.

g. Bonus History screenshots showing comments and actions related to his EAB contract.

h. MilTech History screenshots showing his MilTech position start date(s) and MilTech temp position expiration date.

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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant signed a contract agreeing to affiliate with the ARNG for 3-year Critical Skill (CS) Duty MOS 15T and would receive a lump-sum payment of \$10,000.00 less taxes. His contract stipulated that he would be eligible for continued receipt of his EAB if he accepts a MilTech position on a temporary assignment tour for less than 180-days in any continuous 12-month period. His contract also stipulated that it would be terminated without recoupment if he accepts permanent/Indefinite MilTech position (Includes Temporary MilTech position that exceeds 180-days within a continuous 12-month period). The evidence further shows the applicant did accept long term MilTech position and as such he was in breach of his contract. It is unknown why his incentive was not paid within 180 days as his contract stated. He argues that if the incentive had been paid within 180 days, he would have been paid and on termination there would not have been any recoupment. The Board was persuaded by his argument and determined that relief is warranted.

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 is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army and Army National Guard records of the individual concerned be corrected by:

- showing the applicant submitted an exception to policy to the National Guard Bureau for payment of his Enlisted Affiliation Bonus
- showing the NGB timely received, processed, and approved the applicant's exception to policy for payment of the \$10,000 incentive from the ARNG funds.

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, USC, 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. National Guard Regulation 600-7 (Selected Reserve Incentive Programs (SRIP)) governs policies and procedures for the administration of the ARNG SRIP programs.

a. Paragraph 1-21 (Continued receipt of incentives) states, a Soldier may be eligible for continued receipt of incentive(s) when a MilTech on a temporary assignment tour for less than 180 days in a continuous 12-month period. Memorandum from the Human Resource Office should be uploaded into the incentive management system to confirm the not to exceed dates of the temporary position and the number of days within a continuous 12-month period.

b. Paragraph 1-25b (Termination with recoupment of incentives) states, termination with recoupment is defined as termination of the incentive with Soldier is entitled to a prorated incentive amount based on the number of months served satisfactorily prior to the incentive termination date. The Soldier may be required to pay funds back to the government or the Soldier may be entitled to a payment. Termination with recoupment will occur, if a Soldier— Accepts a position as a MilTech to include temporary technician over 179 days and indefinite technician, where membership is a condition of employment, effective on the date of employment and the Soldier has served less than the required amount of time per current DOD policy. Termination is the day prior to the start date on the Standard Form (SF) 50, SF 52, or Human Resource Office (HRO) memorandum for permanent MilTechs and on day 180 for all other MilTechs when 179 days is exceeded in a 12-month period.

c. Paragraph 1-26 (Termination without recoupment) states, the conditions under which termination without recoupment of incentives is warranted are prescribed in this paragraph and also the applicable program chapters and sections of this regulation. The effective date of the termination will be the effective date of the action. Payments due prior to the effective date will be paid to the Soldier. Payments due after the effective date of the action will be canceled and will not be paid to the Soldier. A Soldier accepts position as a MilTech (includes temporary technician/indefinite technician over 179 consecutive days) where membership is a condition of employment and has served the required amount of time per current SRIP policy. The termination effective date is the day prior to entry as a permanent technician or day 180 for temporary/indefinite technicians.

d. Paragraph 2-9 (General) states, under the provisions of Title 37, USC, section 308c this incentive is offered to an applicant who is a former enlisted member of an armed force who enlists in the Selected Reserve (SELRES) of an armed force for a period of not less than three years in a critical skill, unit, or pay grade designated by the Secretary concerned, after being discharged or released from active duty under honorable conditions. Soldier must execute a written agreement to serve as enlisted member in the SELRES and meet the eligibility criteria for affiliation as prescribed by governing law, Department of Defense Instruction (DODI), Department of the Army (DA), ARNG regulations or as outlined in the current Fiscal Year (FY) SRIP policy.

e. Paragraph 2-10 (Entitlement) states, entitlement for incentive begins on the date of accession to the ARNG. The unit Commander must ensure that Soldiers are counseled when they affiliate, that they will not receive payments immediately under this program. Payments will be processed through personnel pay channels upon verification of all contractual documentation and meeting the terms and conditions outlined in the incentive agreement.

f. Paragraph 2-11 (Eligibility) states, in pertinent part, the applicant must not be enlisting to qualify for a MilTech (includes temporary and indefinite technician positions unless the temporary position is for 179 days or less) or Active Guard Reserve (AGR) position Title 10 or Title 32. Execute a written agreement to serve as an enlisted member in the SELRES. Meet additional requirements directed by DARNG or the current FY SRIP policy.

3. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) prescribes eligibility criteria governing the enlistment of persons, with or without prior service (PS), into the Regular Army (RA), the USAR, and the Army National Guard (ARNG).

a. Paragraph 10-8a(4) (Termination of incentives) provides, in pertinent part, entitlement to an incentive will be terminated when a Soldier accepts an AGR position, a permanent MilTech position, or a temporary MilTech position of more than 179 days, where membership in the Selected Reserve is a condition of employment.

b. Paragraph 10-9c(7) (Recoupment of incentives) provides, in pertinent part, Soldiers will have their enlistment, reenlistment, and/or affiliation bonus terminated without recoupment when a Soldier accepts an AGR position, a permanent military technician position, or temporary military technician position of more than 179 days, where membership in the Selected Reserve is a condition of employment. These Soldiers will have their enlistment, reenlistment, and/or affiliation bonus terminated without recoupment as long as they serve one or more days in the losing Selected Reserve (for example, 1 or more days on or after the effective date of the contract).

c. Paragraph 10-16 (SRIP-EAB) provides, in pertinent part, bonus amount and payment method (lump sum consisting of the entire bonus amount or installments) will be in accordance with ARNG and USAR annual SRIP policy. Entitlement and period of service is computed from the effective date of assignment to the Selected Reserve unit; the day following REFRAD for transitioning Regular Army Soldiers.

4. Department of Defense Instruction 1205.21 (Reserve Component Incentive Programs Procedures), currently in effect, requires each recipient of an incentive to sign a written agreement stating the member has been advised of, and understands the conditions under which continued entitlement to unpaid incentive amounts shall be terminated and which advance payments may be recouped. The agreement must clearly specify the terms of the Reserve Service commitment that authorizes the payment of the incentive.

5. Title 37, USC, section 331 (General bonus authority for enlisted members) provides that, the Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who (1) enlists in an armed force; (2) enlists in or affiliates with a reserve component of an armed force; (3) reenlists, voluntarily extends an enlistment, or otherwise agrees to serve for a specified period in a designated career field, skill, or unit of an armed force; or under other conditions of service in an armed force; (4) transfers from a regular component of an armed force to a reserve component of that same armed force or from a reserve component of an armed force to the regular component of that same armed force.

6. Title 31, USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//