

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230000004

APPLICANT REQUESTS:

1. Correction of his record to show a debt from the Defense Finance and Accounting Service (DFAS) was remitted or canceled related to his Reenlistment/Extension Bonus (REB) in the amount of \$10,514.37 with repayment of all monies collected.
2. Correction of his middle name to show [REDACTED] vice [REDACTED] on Orders Number 130-053, dated 9 May 2012.
3. Payment of the second half of his REB.
4. Correction of his rank at the time of discharge to show corporal (CPL)/E-4.
5. Correction of his time in service.
6. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Orders Number 130-053, 9 May 2012
- Civil case
- Driver license

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 enlisted in the Army National Guard (ARNG) in April 2005 as a CPL/E-4 and was asked after completing initial active duty for training and reenlisting to wear the rank/grade of specialist (SPC)/E-4. The request was made by a higher ranking enlisted member because of his prior tenure in a different branch of service. He enlisted in the ARNG for one year in April 2005. He reenlisted for six years in April 2006 with entitlement to a REB. He was honorably discharged from the ARNG on 26 April 2012. At the time of his discharge, he had not received the second half of his REB. DFAS attempted to make a deposit of the remainder of his REB more than 30 days after his effective date of discharge. DFAS also subsequently forced a recoupment of the attempted deposit by intercepting his federal income tax since 2013. The amount allegedly owed to DFAS is \$10,514.37. The deposit was attempted to an account that had been closed prior to his discharge. He did not receive the attempted payment.

b. In February 2014 he received correspondence from DFAS notifying him that his federal income tax refund for 2012 was being intercepted towards the repayment of a debt allegedly owed by him to DFAS. He had no knowledge of the debt prior to receiving that correspondence. After contacting DFAS in the days thereafter, he was informed by them that they made a payment of a bonus entitlement to his checking account in June 2012 in the amount of \$4,891.00 after federal and state taxes and a debt collection fee. The total of taxes and fees of \$2,436.67 were deducted from the bonus entitlement of \$7,291.67. He would like the recoupment to end and the amount collected so far to be refunded to him for the following reasons: a) The payment was attempted by DFAS more than thirty days after his effective date of discharge and without notice to him. b) The account which was to receive the deposit had been closed. Therefore, he did not receive the payment nor any notice from the bank nor from DFAS. c) His federal income tax refunds are intercepted by the Department of the Treasury since 2013. He has no means of resolving the issue at the local level through his former Unit. 4) Correction of time in service he has incurred by DFAS for the recoupment of a REB that was attempted after his effective date of discharge and also of which he did not receive the money or the deposit.

c. The debt is erroneous. The original amount of the debt was also alleged by DFAS to have been more than \$10,000.00. The method of recoupment has been via interception of his federal income tax refunds via the Department of the Treasury since 2013. He has suffered the encumbrance for more than 10 years now. The encumbrance is incidental to his 2006 reenlistment in the ARNG and also to an attempted deposit of monetary funds by DFAS to his closed checking account more than 30 days after his effective date of discharge. He solemnly requests that the 10 years that he has suffered the encumbrance thereof be credited to him as federal military service and that the increased time in service be reflected in his military records.

3. The applicant requests for his time in service be corrected for encumbrance of 10 years of having to deal with DFAS and the Department of Treasury related to the

recoupment of his REB. The applicant enlisted in the ARNG on 26 April 2005 and reenlisted in the ARNG on 11 March 2006 for six years changing his expiration term of service to 25 April 2012. He was honorably discharged from the ARNG on 25 April 2012 by way of Orders Number 130-053 dated 9 May 2012. His time in service is correct. The Board will not address this issue. Additionally, the applicant requests correction of Orders Number 130-053 to be corrected to show his middle name as [REDACTED] vice [REDACTED]. Orders Number 037-001 dated 6 February 2024 corrected the applicants middle name as depicted on Orders Number 130-053 as [REDACTED] to show [REDACTED]. The Board will not address this request. The Board will address the remainder of the applicant's requests.

4. A review of the applicant's official record shows the following:

a. On 26 April 2005, having had prior enlisted service in the U.S. Air Force in the rank/grade of Senior Airman (SRA)/E-4, the applicant enlisted in the ARNG for one year in the grade of E-4 for Military Occupational Specialty (MOS) 91W (Healthcare Specialist). Orders Number 511607 issued by the Military Entrance Processing Station ordered the applicant to initial active duty for training with a report date of 12 May 2005 for basic combat training and subsequent advanced individual training as a 91W.

b. The applicant's records are void of a DD Form 214 (Certificate of Release or Discharge from Active Duty) showing his entry on active duty for training and his subsequent release from active duty.

c. DA Form 2-1 (Personnel Qualification Record) shows in item 18 (Appointments and Reductions) "SPC " ARNG effective date 26 April 2005.

d. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 11 March 2006 shows the applicant reenlisted/extended his current enlistment for a period of 6-years. In conjunction with this reenlistment/extension National Guard Bureau (NGB) Form 600-7-3-R-E ((Annex R to DD Form 4 or DA Form 4836 REB Addendum ARNG) was completed showing the following:

(1) Section II (Eligibility) he was reenlisting or extending for 6 years.

(2) Section III (Bonus Amount and Payments) he was entitled to \$15,000.00 REB. The initial payment of 50 percent would be paid on the date his reenlistment contract takes effect. The second and final 50 percent would be processed on his 36th month anniversary.

e. On 18 December 2006, Orders Number 352-1210 issued by the Joint Force Headquarters – Louisiana, awarded the applicant MOS 68W (formerly 91W), effective 1 October 2006.

f. On 9 May 2012, Orders Number 130-053 issued by the Joint Force Headquarters – Louisiana, honorably discharged the applicant in the rank/grade of SPC/E-4 from the ARNG, effective 25 April 2012. These orders show Selected Reserve Incentive Program (SRIP) "Yes", Termination: "Yes", Recoupment: "Yes", Termination Date 7 April 2009, Reason: Other."

5. The applicant provides:

a. Civil case showing the applicant as the plaintiff against the Department of Treasury, Internal Revenue Service, and DFAS for seizure of money from 2013-2018 without due process of law. The civil case is provided in the supporting docs for the Boards review.

b. Drive license showing the applicant's correct middle name.

6. On 6 March 2024, in the processing of this case, the NGB, Chief, Special Actions Branch, provided an advisory opinion stating:

a. After review of the applicant's records that are available the applicant was eligible to be enlisted as a specialist (SPC)/E-4 with his previous service time. Both SPC and CPL are of E-4 rank. His enlistment document does not specify but after review and coordination with the [REDACTED] ARNG ([REDACTED] ARNG) the applicant's follow-on documents only specify SPC. There is no indication on any record that he was a CPL.

b. The applicant's identification shows his middle name is spelled [REDACTED]. His discharge order and IPERMs records show his middle name incorrectly as [REDACTED]." The [REDACTED] ARNG has corrected his discharge order to reflect the accurate spelling of his middle name as [REDACTED] (Enclosure 1).

c. The applicant reenlisted for six years and signed a REB addendum on 11 March 2006 for \$15,000.00 to be paid in two payments of \$7,500.00. DFAS pay data in the Guard Incentive Management System shows three payments were made inside the Defense Joint Military Pay System, two for \$7,500.00 each on 20 July 2007 and 15 January 2008 and one payment for \$7,291.67 on 8 June 2012, which is currently in recoupment. There is no indication any of these payments were rejected. The applicant was not entitled to the third payment and was paid erroneously.

d. It is the recommendation of this office that the applicant's request be denied. His discharge order was corrected to reflect the accurate spelling of his middle name as [REDACTED]. There is no indication he attained the rank of CPL, and all records reflect SPC/E-4. He received \$15,000.00 he was entitled to per his REB in two payments of \$7,500.00 each. He received an unexplained third payment of \$7,291.67 in 2012 with an entitlement date of 7 April 2009 with no record to support this

payment. This payment is in recoupment currently. There is no record of any payment being rejected.

e. This advisory opinion was coordinated with the National Guard Incentives Branch, National Guard Enlisted Policy Branch and the [REDACTED] ARNG.

7. On 6 March 2024, the applicant was provided with a copy of the advisory opinion to provide a comment or rebuttal. He did not respond.

#### 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 and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and National Guard Bureau-Special Actions Branch advisory opinion, the Board concurred with the advising official finding the applicant request for correction to his middle name has already been corrected by the [REDACTED] ARNG. The applicant's contention for correction of his name have already been resolved. The Board noted the opine found no indication he attained the rank of CPL, and all records reflect SPC/E-4.

2. Furthermore, the Board determined the applicant received \$15,000.00 as entitled per his reenlistment bonus in two payments of \$7,500.00 each. Evidence shows the applicant received an unexplained third payment of \$7,291.67 in 2012 with an entitlement date of 7 April 2009 with no record to support this payment. This payment is in recoupment currently. The Board agreed the applicant was not entitled to the third payment and was paid erroneously. There is no record of any payment being rejected. Based on the advisory opine and the preponderance of evidence, the Board denied relief.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

4/11/2024

X █

CHAIRPERSON

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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. Army Regulation (AR) 601-210 (Active and Reserve Components Enlistment Program) in effect at the time prescribes eligibility criteria governing the enlistment of persons, with or without prior service, into the Regular Army, the Army Reserve, and the ARNG. Paragraph 3-18 (Enlistment pay grades for prior Service for Reserve Component enlistment) states an applicant who is a former member of the Armed

Forces and who has completed initial active duty for training in grades E-1 through E-4 is authorized to enlist at the pay grade held at last discharge.

3. AR 600-20 (Army Command Policy) paragraph 3-4 (Date of rank, enlisted Soldiers) in effect at the time states, on enlistment in the U.S. Army ARNG more than 24 months after discharge, the date of rank of enlistment grade of the date of enlistment.

4. AR 15-185 (ABCMR) paragraph 2-9 states, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states, 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.

5. Title 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

6. 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. The agreement must clearly specify the terms of the Reserve Service commitment that authorizes the payment of the incentive.

7. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, 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. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//