

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 December 2023

DOCKET NUMBER: AR20230001496

APPLICANT REQUESTS: payment of her reenlistment bonus.

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

- DD Form 149 (Application for Correction of Military Record)
- DD form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 11 December 2006
- Certificate and Acknowledgement U. S. Army Reserve (UISAR) Service Requirement and Methods of Fulfillment, 11 December 2006
- DD Form 1966 (Record of Military Processing – Armed Forces of the United States), 11 December 2006
- DD Form 214 (Certificate of Release or Discharge from Active Duty) service ending 22 May 2007
- DD Form 214 service ending 6 March 2009
- DD Form 214 service ending 18 February 2012
- DD Form 4, 28 February 2013
- DA Form 3540 (Certificate and Acknowledgement of USAR Service Requirements and Methods of Fulfillment)
- USAR Reenlistment Bonus Written Agreement
- DA Form 5261-4-R (Student Loan Repayment Program Addendum)
- DD Form 214 service ending 19 November 2016
- DA Form 2173 (Statement of Medical Examination and Duty Status)
- U.S. Army Physical Evaluation Board Memorandum, Subject: Request for Rating: Staff Sergeant (SSG) H-T- (the applicant)
- DA Form 199 (Informal Physical Evaluation Board (PEB) Proceedings)
- DA Form 5016 (Chronological Statement of Retirement Points), 28 October 2022

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 in effect, her reenlistment bonus was taken from her and she was advised it was because she had an unsatisfactory year during the contract period. Her financial records and DA Form 5016 shows that she did not have an unsatisfactory year. She earned the reenlistment bonus by reenlisting due to a shortage of personnel and she served three combat tours. The injustice has caused her a serious financial hardship which ruined her credit and she had to depend on the kindness of other to survive. She requests payment of her reenlistment bonus.

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

a. The applicant enlisted in the U.S. Army Reserve (USAR) on 11 December 2006 with a non-prior service enlistment bonus in the amount of \$14,000.00 and a non-prior service enlistment bonus (SHIP) in the amount of \$5,000.00.

b. On 13 December 2006, Orders Number 6347008, issued by the Military Entrance Processing Station (MEPS), the applicant was ordered to initial active duty for training on 5 January 2007 to attend Basic Combat Training and Advanced Individual Training.

c. On 8 January 2007, Orders Number C-01-700631, issued by the U. S. Army Human Resources Command (HRC), the applicant was released from the Delayed Entry Program and assigned to the USAR Troop Program Unit (TPU), effective 5 January 2007.

d. The applicant was released from active duty on 22 May 2007 with an uncharacterized character of service. DD Form 214 shows the applicant completed 4-months and 18-days of active service and was awarded Military Occupational Specialty (MOS) 92F (Petroleum Supply Specialist).

e. On 7 February 2008, Orders Number 08-038-00131, issued by the 143rd Transportation Command (TRANSCOM), the applicant was ordered to active duty in support of Operation Iraqi Freedom, effective 21 February 2008.

f. On 12 February 2009, Orders Number 043-0010, issued by Headquarters (HQs), U.S. Army Fort Dix, the applicant was released from active duty on 6 March 2009. DD Form 214 shows the applicant was honorably released and completed 1-year and 16-days of active service.

g. On 27 October 2010, Orders Number 10-300-00080, issued by the 143rd Sustainment Command (Expeditionary) (ESC), the applicant was ordered to active duty in support of Operation New Dawn, effective 2 January 2011.

h. On 21 December 2011, Orders Number 355-0133, issued by HQs, 1st Armored Division and Fort Bliss, the applicant was released from active duty on

18 February 2012. DD form 214 shows the applicant was honorably released from active duty and completed 1-year, 1-month, and 17-days of active service.

i. The applicant's service record was void of any evidence of a reenlistment; however, the applicant provided the reenlistment documents which is listed in paragraph 4.

j. On 26 April 2013, Orders Number 13-116-00023, issued by the 143rd ESC, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 20 June 2013.

k. On 22 July 2013, Orders Number 203-0140, issued by HQs, III Corps and Fort Hood, the applicant was released from active duty on 27 July 2013 due to a pre-existing or newly diagnosed medical condition. The applicant could not be re-mobilized until she was medically cleared at home station.

l. On 12 March 2014, Orders Number 14-071-00002, issued by the 143rd ESC, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 14 March 2014.

m. On 19 March 2014, Orders Number 078-0115, issued by HQs, III Corps and Fort Hood, the applicant was released from active duty on 20 March 2014 due to a pre-existing or newly diagnosed medical condition. The applicant could not be re-mobilized until she was medically cleared at home station.

n. On 31 March 2014, Orders Number 14-090-00001, issued by the 143rd ESC, the applicant was reassigned to the 377th Quartermaster Company, effective 31 March 2014 due to not deploying due to a medical condition and follow-up was directed with a medical provider and she could not be re-mobilized until medically cleared.

o. On 23 September 2014, Orders Number 14-266-00076, issued by the 81st Regional Support Command, the applicant was reassigned to the 309th Transportation Detachment, effective 1 November 2014 due to promotion.

p. The applicant's service record was void of an order to active duty. On 6 October 2016, Orders Number 280-0186, issued by HQs, III Corps and Fort Hood, the applicant was released from active duty on 19 November 2016. DD Form 214 shows the applicant was ordered to active duty in support of Operation Enduring Freedom/Freedom Sentinel on 26 February 2016 and was honorably released from active duty on 19 November 2016 and she completed 8-months and 24-days of active service.

q. The applicant extended her enlistment in the USAR on 24 January 2019.

r. On 11 December 2019, Orders Number MM-9345-00016, issued by HQs, U.S. Army Medical Command (MEDCOM), the applicant was ordered to active duty for 1-day to participate in Reserve component managed care evaluation/Disability Evaluation System (DES) related medical appointments effective 16 October 2019.

s. On 11 December 2019, Orders Number MM-9345-00017, issued by HQs, MEDCOM, the applicant was ordered to active duty for 1-day to participate in Reserve component managed care evaluation/DES related medical appointments, effective 21 October 2019.

t. On 3 February 2020, the PEB found the applicant physically unfit for retention due to post traumatic stress disorder and recommended the applicant be placed on the Permanent Disability Retired List (PDRL) with 70 percent disability which was incurred or aggravated in the line of duty. The applicant concurred with the findings and recommendations.

u. On 21 February 2020, Orders Number D 052-28, issued by the U.S. Army Physical Disability Agency, the applicant was placed on the PDRL on 27 March 2020 with 70 percent disability.

v. DA Form 5016 dated 9 April 2023, shows during the anniversary year ending 11 December 2014 through 10 December 2015 the applicant was awarded 50 inactive duty points, 15 membership points, and 14 active duty points for a total of 79 creditable points for a qualifying year for retirement.

4. The applicant provides:

a. DD Form 4 shows the applicant reenlisted in the USAR on 28 February 2013 for 6-years with the bonus control number F04B013059XX with the effective date of the contract of 1 March 2013 and her bonus payments would begin on the effective date of the contract.

b. DA Form 3540 shows the applicant was reenlisted for continued membership in the USAR with previous or current service.

(1) Section VI (Satisfactory Participation) stated the applicant must attend all unit training assemblies, at least 48 per year, unless excused by proper authority. If she did not receive credit for attendance for any reason, she would be charged with an unexcused absence. If she accrued nine or more unexcused absences during any continuous 365-days, she would be declared an unsatisfactory participant.

(2) Section VII (Unsatisfactory Participation) stated if the applicant failed to participate satisfactorily, she would be declared an unsatisfactory participant and could

be subject to separation from the service. If she was entitled to bonus payments which was based on service in the Selected Reserve, the bonus may be terminated, and she may be required to repay all or portion of the funds she received.

c. USAR Reenlistment Bonus Written Agreement shows the applicant reenlisted in MOS 92F for 6-years and she understood that she must serve the entire period satisfactorily unless excused for the convenience of the Government. She was reenlisting for a bonus in the amount of \$10,000.00. To retain the bonus once paid was contingent upon satisfactory participation in the Selected Reserve and was subject to recoupment. The lump sum of the bonus would begin on the effective date of the contract. Section VIII (Termination) states when the entitlement of the reenlistment bonus was terminated the payments may be subject to recoupment if she became an unsatisfactory participant.

d. DA Form 5261-4-R showing she was also entitled to the Student Loan Repayment Program incentive.

e. DA Form 2173 shows on 6 March 2017, the applicant was attending counseling and during the treatment, she was directed to be admitted to a behavioral health treatment facility for approximately 30-days in an in-patient program.

f. On 5 November 2019, the U.S. Army Physical Disability Evaluation Board issued a memorandum which stated the PEB found the applicant physically unfit for continued military service due to post traumatic stress disorder the Department of Veterans Affairs was requested to provide a disability rating.

g. DA Form 5016 dated 28 October 2022 shows the during the anniversary year beginning on 11 December 2014 and ending on 10 December 2015 the applicant was awarded 50 inactive duty training points, 15 membership points, and 14 active duty points with a total of 79 creditable points for a qualifying year for retirement.

5. On 9 May 2023, in the processing of this case, the Office of the Deputy Chief of Staff, G-1, provided an advisory opinion regarding the recoupment of her bonus. The advisory official did not recommend relief to the applicant's request as she did not provide sufficient evidence of an error or injustice to rebut the unsatisfactory participation, the reason for the bonus recoupment. In reviewing the applicant's records confirmed the recoupment was due to unsatisfactory participation. Her records show the applicant was charged with an unexcused absence on:

- 2 May 2015
- 22 August 2015
- 11 September 2015 – morning
- 17 October 2015

- 18 October 2015

6. On 14 April 2023, in the processing of this case the Criminal Investigation Division provided a sanitized report of investigation regarding military sexual assault/trauma which shows while deployed to Tallil, Iraq in 2008 the applicant reported cruelty of subordinates and wrongful sexual contact and the investigation disclosed the applicant was sexually assaulted by a senior noncommissioned officer.

7. On 22 April and 19 May 2023, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. The applicant responded on 21 May 2013 in effect stating during the period when she was charge with unexcused absences her unit was without a unit administrator and the person who was processing the pay was inexperienced and she believed the miscoding was an administrative error. She did not receive pay for May, June, and July Unit Training Assemblies (UTA) until November 2015. She was authorized to be absent from the UTAs in question and allowed to reschedule the training, 2 May 2015 UTA rescheduled for 13 July 2015 and paid on 23 November 2015. Her pay history shows that she had all qualifying years for retirement and none were unsatisfactory years. The applicant provided:

a. DA Form 1380 (Record of Individual Performance of Reserve Duty Training) shows she performed 8-hours of duty on 12 and 13 July 2015 for 2 May and 6 June 2015 UTAs.

b. E-mail shows the applicant inquired if her pay had been processed for duty performed in July 2015 and inquired what she needed to do for rescheduling training for October and November 2015 UTAs.

c. Defense Joint Military Pay System- Reserve Component (DJMS-RC) Leave and Earnings (LES) History shows on 4 September 2015 the applicant was paid for inactive duty training (IDT) performed on 23 August 2015.

d. LES dated 23 September 2015 shows the applicant was paid for IDT on afternoon of 11 September 2015 and all day on 12 and 13 September 2015.

e. E-mail dated 12 November 2015 which the applicant was provided instruction on the process to request rescheduled training.

f. LES dated 18 November 2015 which shows the applicant was paid for an additional assembly for nuclear training on the afternoon of 23 October 2015.

8. On 23 October 2023, in the processing of this case, Headquarters, U.S. Army Reserve Command (USARC) provided an advisory opinion regarding the applicant's

request for payment of her reenlistment bonus. The advisory official stated the evidence the applicant provided was insufficient to justify changing any of the nine unexcused absences on her timesheet attendance. A Soldier can perform periods of duty that will qualify them for a "good year" for retirement purposes based on their Retirement Year Ending (RYE) date and still be declared an unsatisfactory participant. This is because the 12-month period for a Soldier to be declared an unsatisfactory participant is independent of their RYE date. This is also because Soldiers can receive credit for performing additional duty in other authorized duty statuses to meet the minimum required points for a "good year" for retirement purposes.

The applicant was declared an unsatisfactory participant when she accumulated nine unexcused absences during the period of 2 May through 18 October 2015. Army policy requires the termination and recoupment of a Soldier's incentive when they accumulate nine or more unexcused absences within 12-months. The applicant received unexcused absences for:

- 2 May 2015, periods one and two
- 22 August 2015, periods one and two
- 11 September 2015, period one
- 17 through 18 October 2015, periods one and two

The applicant has not provided any documentation in which she was authorized excused absences or Rescheduled Training (RST) for any of the above dates. E-mail traffic or other correspondence with the Unit Administrator does not constitute authorization from the commander to conduct RST or to be excused from attendance at UTA. An advisory opinion is available for review for more detailed information.

9. On 27 October 2023, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. She 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 contentions, the military record, and regulatory guidance. Upon signing both enlistment incentives, the attested to her understanding of agreement to the terms and conditions required to receive and retain the reenlistment bonus. The Board agreed that the applicant became an unsatisfactory participant after accumulating nine unexcused absences during the period of 2 May through 18 October 2015. As that was not in accordance with the terms and conditions of the contract, she became ineligible to retain the bonus.

After due consideration of the request, the Board determined that the evidence presented insufficient evidence to warrant a recommendation for relief.

2. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

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 does/does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are sufficient as a basis for correction of the records of the individual concerned.

[Redacted signature area]

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.



ADMINISTRATIVE NOTE(S):

1. Reference the enclosed request for correction of military records from the subject individual to correct her DD Form 214 (Certificate of Release or Discharge from Active Duty) for the period ending May 22, 2007, by:

- Delete: Item 24 (Character of Service): Uncharacterized
- Add: Item 24: Honorable

2. A review of the records listed below (enclosed) is sufficient to substantiate correction of the DD Form 214 without action by the Board.

- DD Form 214 service ending May 22, 2007
- Army Regulation 635-8

3. Please correct the applicant's DD Form 214 by correcting character of service shown in paragraph 1 above. Provide the applicant a copy of the corrections. Please ensure that the corrections are recorded in the applicant's official military personnel record.

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) 135-91 (Service Obligations, Methods of Fulfillment, Participation Requirements and Enforcement Procedures) in effect at the time, prescribes policies and procedures governing the various types of service obligations and participation requirements.

a. Paragraph 3-1 (Satisfactory participation in troop program unit), Troop Program Units (TPU) Soldiers are required to participate in at least 48 scheduled inactive duty training (IDT)s, and not less than 14-days, exclusive of travel time, of annual training. Satisfactory participation is defined below. Attending all scheduled inactive duty training (IDT) (IDT)s unless excused by the unit commander or granted a leave of absence. Soldiers who do not receive credit for attendance for any of the reasons noted above will be charged with an unexcused absence.

b. Paragraph 3-13, (General Participation Requirement), two important factors are considered in determining participation and/or service required for enlisted Soldiers in the Ready Reserve. They are terms of the contract under which they entered the Armed Forces and the number of months served on AD. Once AD has been performed, the period of Ready Reserve service in which training is mandatory may be reduced by satisfactory participation in a TPU. A Soldier receives credit for unit participation from the date of assignment to a unit. Non-prior service Soldiers who were enlisted in the USAR are required to remain in the Ready Reserve for the full period of their statutory obligation.

c. Paragraph 4-2, the unit commander or acting commander is authorized to excuse absences and authorize equivalent training (ET). This authority will not be further delegated. General officer commanders (for USAR) are authorized to grant exceptions to unexcused absences. This authority may be delegated to commanders who are LTCs or higher. ET will be performed in a pay status within 60-days of the absence.

d. Paragraph 4-12 (Conditions of unexcused absence), an unexcused absence is any absence not covered in sections II and IV. Soldiers will be charged with unsatisfactory participation when without proper authority they; accrue in any 1-year period a total of nine or more unexcused absences from scheduled inactive duty training (IDT)s.

e. Paragraph 4-14 (Unexcused absence from unit training assemblies), a. (Unsatisfactory participation), a Soldier is an unsatisfactory participant when nine or more unexcused absences from scheduled IDTs occur during a 1-year period. b. (Charging unexcused absences), unless an absence is authorized, a Soldier failing to attend a scheduled single or multiple unit training assembly (MUTA) will be charged with an unexcused absence. When absence involves a MUTA (or any portion of a MUTA), the charge will be one unexcused absence for each 4-hour period not attended, but not to exceed four unexcused absences. Unexcused absences remain charged to the soldier on reassignment or reenlistment in another RC unit.

3. Title 37 USC, section 308 (Reenlistment Bonus), (d) A member who does not complete the term of enlistment for which a bonus was paid to the member under this section, or a member who is not technically qualified in the skill for which a bonus was paid to the member under this section, shall be subject to the repayment.

4. Department of Defense Instruction (DoDI) 1304.31 (Enlisted Bonus Program), establishes policy, assigns responsibilities, and prescribes procedures for a bonus payment. Reenlist, voluntarily extend an enlistment, or otherwise agree to continue to serve in a Military Service; 4.3 (Prior Service Reenlistment Bonus), The Secretary of the Military Department may offer a prior service reenlistment bonus to individuals with previous military service who reenlist in a Reserve Component of a Military Service. Execute an agreement to serve as an enlisted member in the Regular or Reserve Component of a Military Service for a period of not less than 3 years upon acceptance of the agreement by the Secretary of the Military Department concerned.

5. Title 37 USC, section 331 (General bonus authority for enlisted members), (a The Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who:

- enlists in an armed force
- enlists in or affiliates with a reserve component of an armed force
- 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
  - under other conditions of service in an armed force

(g) (Repayment), a person or member who receives a bonus under this section and who fails to complete the period of service, or meet the conditions of service, for which the bonus is paid, as specified in the written agreement under subsection (d), shall be subject to the repayment.

//NOTHING FOLLOWS/