

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230001941

APPLICANT REQUESTS: cancellation/waiver of debt collection in the amount \$7,363

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

- DD Form 149 (Application for Correction of Military Record)
- NGB Form 22 (Report of Separation and Record of Service)
- May 2018 Retired Reserve Order
- Annex B (Enlisted Affiliation Bonus Addendum – Army National Guard)
- Listing of service-connected disabilities.

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 was unaware of a collection in the amount of \$7,363.00 until recently. He would like to know why he owes this amount, and to waive it, due to being medically discharged. He only received half (\$5,000) of his sign-in bonus (\$10,000). He has been dealing with life stressors as well as receiving medical treatment for his service-connected disabilities. He cannot afford the debt.

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

a. He enlisted in the Regular Army on 11 July 2011 and held military occupational specialty 68W, Health Care Specialist. He was honorably released from active duty on 10 July 2015 and transferred to a unit in the [REDACTED] Army National Guard ([REDACTED] ARNG).

b. He enlisted in the [REDACTED] ARNG on 11 July 2015 for 6 years. In connection with his enlistment, he signed Annex B, Enlisted Affiliation Bonus Addendum.

(1) he agreed to affiliate into a duty MOS qualified position for 6 years and agreed to serve satisfactorily, as prescribed by the appropriate regulations of the

ARNG, for the entire period of affiliation in the ARNG in the same Unit Identification Code and CS MOS and in an active drilling status unless excused for the convenience of the government.

(2) he must continue to meet the physical requirements for his EAB MOS from the contract signature date up to the contract start date (Day after his Regular Army ETS date from Active Duty).

(3) he is affiliating into the ARNG for the 6 years duty MOS qualified Enlisted Affiliation Bonus (EAB) and will receive a total payment in the amount of \$20,000 less taxes. The EAB will be processed in two installments. The first 50 percent will be processed within 180 days after his affiliation into the ARNG, reporting to his unit of assignment and verification of his critical EAB UIC/MOS qualification in GIMS to include meeting the physical requirements for his EAB MOS. The second 50 percent will be processed within 180 days after the fourth year anniversary of his EAB contract start date provided installment one was previously processed.

(4) termination of incentive eligibility would be initiated in case of unsatisfactory participation. The effective date of the termination is the date of the first unexcused absence.

(5) termination of incentive eligibility would also be initiated/completed upon two consecutive record APFT failures with the effective date being the date of the second failure.

c. On 22 March 2018, an informal physical evaluation board (PEB) found his medical condition of post-traumatic stress disorder unfitting. The informal PEB assigned a 70% disability rating with his disposition as permanent disability retirement.

d. On 16 April 2018, the U.S. Army Physical Disability Agency published Orders D106-02 placing him on the retired list because of disability, effective 21 May 2018.

e. He retired on 21 May 2018. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 2 years, 10 months, and 10 days of ARNG service.

4. On 19 September 2023, the National Guard Bureau provided an advisory opinion in the processing of this case. An NGB official reiterated the applicant's request for waiver of his debt collection in the amount \$7,363 due to encountering financial distress and struggling with service connected disabilities. The NGB official recommended disapproval.

a. Soldier indicates he was unaware of this debt until recently, and thus he inquires about the source of this debt. Furthermore, he reports that he previously received the

first half of his enlistment bonus in the amount of \$5,000 with the ■■■ ARNG. Soldier alleges that he has been facing different life challenges, including receiving medical attention for his service related conditions. Due to his current hardship, Soldier claims he is unable to afford this debt payment and therefore requests debt forgiveness.

b. On 11 July 2015, Soldier enlisted in the ■■■ ARNG for the purpose of completing eight-year service military obligation previously incurred in the Regular Army. On 28 April 2015, he signed an enlistment affiliation bonus (EAB) addendum in the amount of \$20,000 with an obligation end date of 11 July 2021. Per the addendum, the first 50% installment will be paid within 180 days of his transfer to the ARNG while the remaining 50% installment will be processed on the 4th anniversary year of his contract start date. According to the Guard Incentives Management System (GIMS), on 25 November 2011, Soldier received his first installment in the amount of \$10,000. Meanwhile, he failed 2 consecutive Army Physical Fitness Tests (APFT) on 18 October 2015 and 13 May 2016. On 1 July 2016, the ■■■ ARNG Education Office mailed a notification of incentive discrepancy and exception to Policy (ETP) to the Soldier with a suspense of 15 August 2016. Soldier acknowledged the notification by mail receipt. Subsequently, during his unit inactive duty training (IDT) conducted on 10 September of 2016, Soldier was absent without leave (AWOL). On 19 September 2016, the Education Office attempted to mail the Soldier a notification of incentive termination at his last known address. However, the notification was returned as undeliverable. Meanwhile, records indicate that on 23 October 2016, Soldier completed a new DA Form 5960 (BAH) with the address to which previous mail was undeliverable. During a subsequent IDT on 8 and 9 July of 2017, he was again AWOL. Thereafter, on 18 August 2017, Soldier began his medical evaluation board process. Effective 20 May 2018, he was transferred to the permanent disability retirement list (PDRL) due to service related conditions.

c. Pursuant to 37 USC Section 373 (a), a Service Member who receives a bonus or similar benefit and fails to satisfy the eligibility requirements shall repay to the government an amount equal to the unearned portion of the bonus or similar benefit. The same provision is outlined in the Department of Defense Instruction (DoDI) 1304.31 Section 3.1(j) dated 5 November 2020. Furthermore, in accordance with (IAW) Section VI, Para 1 (c) of the signed EAB addendum, a termination of incentive eligibility is initiated in case of unsatisfactory participation. The effective date of the termination is the date of the first unexcused absence. Similarly, Para 1(h) of the signed EAB addendum also stipulates that a termination of incentive is completed upon two consecutive record APFT failures with the effective date being the date of the second failure.

d. Soldier received the first 50% installment of his EAB which was processed on 25 November 2015. Meanwhile, numerous violations to his EAB contract were noted. As illustrated above, not only was he an unsatisfactory participant, but he also had two consecutive APFT failures. Notwithstanding the notice of incentive discrepancy and

recoupment provided, it appears that Soldier failed to submit an ETP within the suspense provided. Therefore, his incentive eligibility was terminated accordingly. In addition, a discrepancy in Soldier's home of record information appears to have affected Soldier's final notification on his incentive termination.

e. This office contacted the [REDACTED] ARNG to further inquire about this matter. The State provided a comprehensive timeline of events that corroborates the above-stated facts. It indicated that Soldier never requested an ETP for the recoupment of his bonus, which was terminated due to APFT failures. The State further noted that this process was initiated almost two years prior to his separation, and more than a year prior to the initiation of his medical evaluation process.

f. The debt collection referenced by the Soldier originates from the termination of his EAB incentive and subsequent recoupment in the amount of \$7,222.22. In view of the above, there is not any substantiating evidence that warrants relief from recoupment. Therefore, this office cannot support Soldier's request for a debt forgiveness. This opinion was coordinated with the [REDACTED] ARNG 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:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.
2. A majority of the Board found that, although the applicant's incentive eligibility was properly terminated based on the terms of his contract, there was a mitigating circumstance in this case, specifically the fact that he was eventually retired for disability. Based on that mitigating circumstance, a majority of the Board determined his record should be corrected to show an exception to policy was approved allowing him to retain the portion of the enlistment incentive he received.
3. The member in the minority concurred with the conclusion of the advisory official that the termination of his incentive and recoupment of the portion of the incentive he did not earn was proper. The member in the minority determined the evidence does not support granting the requested 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 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 an exception to policy was approved authorizing retention of the portion of the enlisted affiliation bonus he received. Any previously collected monies should be returned to the applicant.

2/16/2024
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, 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. Title 37, U.S. Code, § 373 - Repayment of unearned portion of bonus, incentive pay, or similar benefit, and termination of remaining payments, when conditions of payment not met, states in sub-paragraph (a) Repayment and Termination.—Except as provided in subsection (b), a member of the uniformed services who is paid a bonus, incentive

pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the member fails to satisfy such service or eligibility requirement.

3. Department of Defense Instruction (DoDI) 1304.31 Enlisted Bonus Program). dated 5 November 2020, states in section 3.1(j) the Secretaries of the Military Departments may pay a bonus under the EBP (in accordance with Section 331 of Title 37, U.S.C.) to persons or members, as appropriate, to support recruiting and retention efforts in designated military skills, career fields, units, or grades, or to meet some other condition or conditions of service imposed by the Secretary of the Military Department concerned. As far as repayment, a person or member who receives a bonus in accordance with Section 331 of Title 37, U.S.C., and fails to complete the period of obligated service or other conditions of service for which the bonus is paid, as specified in the agreement, and required in Paragraph 3.1.a., must repay the Military Department concerned pursuant to Section 373 of Title 37, U.S.C., and Chapter 2 of Volume 7A of DoD 7000.14-R.

//NOTHING FOLLOWS//