

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230003115

APPLICANT REQUESTS: remission or cancellation of debt associated with his reenlistment bonus (REB).

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

- DD Form 149 (Application for Correction of Military Record)
- Leave and Earnings Statement (LES)

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 an error within his military records resulted in the recoupment of a 2013 bonus. He contests that the error is in relation to an Army Physical Fitness Test (APFT) that was administered as a diagnostic test in between two record tests. The paperwork was initially misplaced but the error was later corrected allowing him to receive the second installment of his REB. He notes that a debt letter was mailed on 30 July 2020, but he denies receiving this letter because he was deployed and did not return home until the end of 2020.
3. A review of the applicant's service records show:
 - a. On 24 July 2007, the applicant enlisted in the Army National Guard (ARNG) for 8 years with entitlement to a \$20,000.00 Critical Skill Enlistment Bonus as an 11B (Infantryman) to be disbursed in a lump sum payment.
 - b. On or about 26 September 2008, the applicant was awarded the 11B Military Occupational Specialty (MOS).
 - c. On 28 August 2010, the applicant was flagged for failing a record APFT.

- d. On 13 March 2011, the applicant's APFT flag was removed.
 - e. On 1 November 2012, the applicant reenlisted/extended for 6 years as an 11B with entitlement to a \$10,000.00 REB to be disbursed in a lump sum payment. National Guard Bureau (NGB) Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 Reenlistment/Extension Bonus Addendum ARNG) Section VI (Termination) provides that eligibility with recoupment will occur if the applicant fails 2 consecutive record APFTs within this contract term. The termination date will be effective on the date of the second APFT failure.
 - f. On 31 March 2013, the applicant was promoted to sergeant (SGT)/E-5.
 - g. On 28 May 2019, the ■ ARNG issued Orders Number 148-1004 announcing the applicant's reclassification into the 12N (Horizontal Construction Engineer) MOS, effective 19 April 2019.
 - h. On 11 June 2019, the applicant reenlisted for 6 years as a 12N with entitlement to a \$20,000.00 REB to be disbursed in 2 installments (50 percent on the day after reaching his current expiration term of service and 50 percent on the fourth-year anniversary of his contract start date).
 - i. On 1 October 2019, the applicant was promoted to staff sergeant (SSG)/E-6.
 - j. On 13 October 2019, the applicant was ordered to active duty in support of Operation Enduring Freedom (Spartan Shield).
 - k. On 24 October 2020, the applicant was honorably released from active duty.
 - l. On 7 February 2023, the applicant was promoted to sergeant first class (SFC)/E-7.
 - m. On 14 February 2023, the applicant reenlisted/extended in the ARNG for 3 years.
4. The applicant provides a LES reflective of a \$4,166.67 prior service REB debt currently being recouped from his pay. The debt was established on 24 July 2019 with an effective date of 24 January 2017.
5. On 22 March 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending disapproval of the applicant's request noting that the applicant reenlisted on 1 November 2012. This contract was verified and has a voucher date of 25 September 2013 for a lump sum payment of \$10,000.00. In February of 2017, the applicant's contract was placed into "monitor rule fail" status. An analysis of his records occurred which revealed that the applicant had failed consecutive APFTs resulting in a

termination with a recoupment action being initiated. A termination letter was issued on 24 February 2017. There is a second payment that was submitted but appears to have failed to process properly. This second payment has been referred to the Selective Reserve Incentive Program Incentive Manager for reprocessing. Per the ■■■ ARNG, it does not appear that this system error is in any way related to the prior contract's termination. ■■■ ARNG also provides that all actions regarding the termination appear to have been properly made and when unclear, a decision was made that benefitted the applicant. The termination reason and recoupment are valid. While the applicant states this has resulted in his bonus not being paid, this appears to be due to an unrelated system error that is now being addressed.

6. On 26 March 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 14 May 2024, the applicant has not responded.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advising official finding the applicant's contract was terminated for failing consecutive Army Physical Fitness Tests and denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

10/28/2024

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, 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 Reserve Fiscal Year 2013 Selected Reserve Incentive Programs (SRIP) Policy Guidance provides that the REB is processed in lump sum payment provided the Soldier meets all eligibility requirements on the contract start date. Termination with recoupment action will occur if a Soldier with a contract executed after 1 March 2009, and with two consecutive record APFT failures and/or two consecutive failures to meet body fat standards within the contract term. Termination will be effective on the date of the second APFT failure or second failure to meet body fat standards.

3. 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.

4. Title 37, USC, Section 373 (Repayment of Unearned Portion of Bonus, Incentive Pay, or Similar Benefit, and Termination of Remaining Payments, when Conditions of Payment not met) provides 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.

5. Army Regulation 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//