

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 August 2024

DOCKET NUMBER: AR20230003714

APPLICANT REQUESTS: in effect, payment of his Non-Prior Service Enlistment Bonus (NPSEB), Student Loan Repayment Program (SLRP) entitlement, and the Montgomery GI Bill Kicker (MGIB-K).

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

- DD Form 149 (Application for Correction of Military Record)
- Reservation for Enlistment Training, 30 June 2020
- Certificate and Acknowledgment United States Army Reserve (USAR) Service Requirements and Methods of Fulfillment, 6 July 2020

FACTS:

1. The applicant states:

a. Before the start of his contract, he signed up to be an 88H (Cargo Specialist), with a \$20,000 sign up bonus and \$50,000 SLRP. He was told that he had to change his military occupational specialty (MOS) because he missed his ship date because he was ill due to COVID, and he would not be given those addenda. He completed basic training and advanced individual training (AIT) for MOS 12N (Horizontal Construction Engineer), but he was never given a new contract to sign for his new MOS with a \$7,000 bonus.

b. Due to him being sick and missing his ship date, he was told he had to change his MOS and he missed out on getting a higher bonus and SLRP. He really needed the SLRP to help pay his student loans. He missed his ship date by 2 days, but when he got his new MOS, they shipped him 2 days from the date he was told. He came back from AIT and kept asking his recruiter about signing a new contract for the MOS that he was in, but he never received a response. Now he is wondering whether he gets the addenda that he signed for in his contract or what he was told for the MOS that he is currently specializing in.

2. The applicant provides:

a. A reservation confirmation, dated 30 June 2020, which congratulated and welcomed the applicant to the USAR and shows:

- Job: 88H
- Title: Cargo Specialist
- Training Ship Date: 16 February 2021
- Basic Training: Fort Jackson, SC with a start date on 22 February 2021
- Training Path: Fort Eustis, VA with a start date on 3 May 2021

b. A Certificate and Acknowledgment USAR Service Requirements and Methods of Fulfillment, dated 6 July 2020, which explained all the conditions and stipulations concerning the applicant's service obligations, methods of fulfillment, and satisfactory participation as a member of the Army Reserve.

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

a. He enlisted in the USAR on 6 July 2020 for a period of 6 years. In conjunction with this enlistment, he completed a Certificate and Acknowledgment USAR Requirements and Methods of Fulfillment, and it shows he enlisted for Unit Vacancy MOS: 88H, Cargo Specialist, and he was to report to the Military Entrance Processing Station (MEPS) on 16 February 2021. He understood that he was enlisting under the Standard Training Program and his enlistment for this program assured him, provided he met the required prerequisites, he would receive training in MOS 88H, Cargo Specialist. He understood he was authorized entitlement to the:

- Non-Prior Service Montgomery GI Bill Kicker (NPS MGIB-K) - \$200.00
- Non-Prior Service Enlistment Bonus (NPSEB) - \$20,000
- Student Loan Repayment Program (SLRP) - \$50,000

b. DA Form 5435 (Statement of Understanding the MGIB Selected Reserve), completed on 6 July 2020, which shows he understood his obligation and the eligibility requirements for entitlement to educational assistance under the MGIB.

c. DA Form 5435-1 (Statement of Understanding – The Selected Reserve MGIB Kicker Program), completed on 6 July 2020, which shows in connection with his enlistment in the USAR, for entitlement to the MGIB-K, he understood and acknowledged that he met the following eligibility criteria and was entitlement to:

(1) Assignment to a unit authorized by Headquarters, Department of the Army (HQDA) for the MGIB-K, in a MOS that is authorized by HQDA for the MGIB-K – 88H, 645th Transportation Company

(2) He was a secondary school diploma graduate.

(3) He completed IADT or would complete the second phase of IADT prior to becoming eligible for the MGIB-K incentive.

(4) MGIB-K Program in the amount of \$200.00 per month (for full time enrollment), for 36 academic months

(5) The procedures for payment of the MGIB-K would be initiated by his unit Commander or direct representative.

(6) He could not receive any portion of the MGIB-K until he received his secondary school diploma, completed IADT and awarded his duty MOS.

d. DA Form 5261 (Selected Reserve Incentive Program – Enlistment Bonus Addendum), completed on 6 July 2020, shows in connection with his enlistment in the USAR, he was entitled to the maximum bonus dollar amount, not to exceed \$20,000. He understood that procedures for payment of the enlistment bonus would be initiated by his unit commander. He further understood that he could not receive any portion of the enlistment bonus until he received his high school diploma equivalent, completed IADT, and awarded his MOS, or received sufficient training to be deployable.

e. DA Form 5261-4 (Student Loan Repayment Program Addendum), completed on 6 July 2020, shows in connection with his enlistment in the USAR he was entitled to loan repayment under the SLRP. He acknowledged that to be eligible for the SLRP, he was contracting for completion of IADT and qualification in MOS 88H, which HQDA approved for a maximum of \$50,000 in loan repayments. He understood that loan repayment under the SLRP applied to him as follows:

(1) The Government would repay a designated portion of any outstanding student loans(s) he secured since 1 October 1975

(2) Qualifying educational loan(s) made by him while a member of the Selected Reserve during his contractual term of service would also be repaid in part under this incentive.

(3) Repayment of the qualifying student loan(s) would be made after each year of satisfactory service in the Selected Reserve after securing the loan(s) and reaching the anniversary date of this agreement. For each year of satisfactory service in the Selected Reserve, the loan amount to be repaid would be as follows:

- A maximum of \$20,000 during his military career and that amount would not increase. He further understood that his eligibility for the \$20,000 SLRP was based on MOS, 88H. He would be subject to reduced benefits if he moved to an MOS not eligible for this amount.

- A maximum of \$50,000 during his military career, would not increase. The amount to be repaid each year would not exceed 15% of the original balance (a maximum of \$8,000) or \$500, whichever is the greater, plus the accrued interest. His eligibility for the \$50,000 SLRP is based on MOS 88H, and he would be subject to reduced benefits if he moved to an MOS not eligible for this amount.

(4) He understood that the repayment of student loans by the Government is not Automatic. It is his responsibility to initiate the request for loan repayments during each year that he meets the requirements explained in this addendum.

(5) He understood that he must continue to serve in the MOS for which he contracted. If he is reassigned to another duty MOS in which he is not qualified, loan repayment would be suspended. He must become MOS qualified within 12 months if on-the-job training is required, or within 24 months if attendance at a service school is required. However, except where his MOS duty position has been changed through unit reorganization, relocation, redesignation, inactivation, or conversion.

f. Orders Number 1096017, issued by the MEPS, Salt Lake City, UT, dated 5 April 2021, ordered the applicant to IADT, with a report date of 6 April 2021 at Fort Jackson, SC, and AIT at Fort Leonard Wood, MO, with a report date of 25 June 2021, in MOS 12N.

g. On 27 August 2021, he was honorably released from active duty training and transferred to the 645th Transportation Company. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows in:

- Block 11 (Primary Specialty): MOS - 12N, Horizontal Construction
- Block 14 (Military Education): Horizontal Construction Course, 18 weeks
- Block 15c (Enlisted Under Loan Repayment Program): Yes

4. On 7 May 2021, the Director, Resource Management, United States Army Reserve Command, G-1, provided an advisory opinion. It states:

a. On 6 July 2020, the applicant enlisted in the USAR for six years in MOS 88H, Cargo Specialist. He was incentivized for \$20,000 NPSEB, \$50,000 SLRP, and \$200 MGIB-K. However, due to COVID-19 related issues, the applicant was unable to fulfill the terms of the initial agreement. The United States Army Recruiting Command (USAREC) renegotiated his contract on 17 February 2021 to the MOS 12N, Horizontal Construction Engineer, which included \$7,000 NPSEB, \$30,000 SLRP, and \$100 MGIB-K. USAREC did not provide an updated contract due to non-standard procedures during the COVID-19 pandemic.

b. USAREC, G-1 Initial Military Training/Incentives Branch has created updated addenda for the applicant's 12N contract and provided guidance on how to initiate his incentives.

5. A copy of the advisory was forwarded to the applicant to provide him an opportunity to rebuttal. However, no response was received.

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 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. Upon review of the applicant's petition and available military records, the evidence shows the applicant enlisted in the Army National Guard on 6 July 2020 for a 6-year term with entitlement to the non-prior service Montgomery GI Bill Kicker (\$200), non-prior service enlistment bonus (\$20,000), and student loan repayment program (\$50,000). The Board reviewed and noted the Director, Resource Management for the U.S. Army Reserve Command (USARC) G-7's advisory opinion finding the applicant enlisted for 6 years in the military occupational specialty (MOS) 88H (Cargo Specialist). Due to COVID-19 related issues, the applicant was unable to fulfill the terms of his initial agreement and the recruiting command renegotiated his contract to a different MOS, which included a separate incentive package; however, an updated contract was not completed. USARC generated updated addenda for the applicant and provided guidance on how to initiate his incentives. However, the Board concluded, the applicant had a good faith intent to fulfill his contract and due to no fault of his own was unable to do so. Therefore, the Board granted full relief for the terms of his initial contract under the provisions of his 88H contract.

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's three signed service addenda for his non-prior service enlistment bonus in the amount of \$20,000, student loan repayment program incentive in the amount of \$55,000, and Montgomery GI Bill Kicker in the amount of \$200 was signed by a service representative and timely processed and entered in the appropriate processing system
- payment of eligible incentives, in accordance with the above service agreements, provided he is otherwise qualified and provided his loans meet statutory and regulatory requirements, as a result of this correction

█

█ █

█

█

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. Army Regulation 621-202 (Army Educational Incentives and Entitlements) states a Soldier must serve in the Selected Reserve for the full term of the contractual agreement. An eligible Soldier is one who contracts to serve in the Selected Reserve of the USAR in a MOS and executes a DA Form 5261-4. Once a Soldier has enlisted and executed a DA Form 5261-4 to participate in the SLRP, the provisions of the DA Form 5261-4 remain in force until participation in the SLRP is terminated in accordance with this regulation or the maximum SLRP benefit has been paid.

2. Army Regulation 135-7 (Incentive Programs) states the SLRP incentive provides for the repayment by the Government of a designated portion of any outstanding loan(s) secured after 1 October 1975. Subject to this chapter, any loan made, insured, or guaranteed under Part B of the Higher Education Act of 1965, or any loan made under Part E of this Act, after 1 October 1975, may be repaid.

a. The following loans qualify for repayment. However, these loans must have been incurred after 1 October 1975 or qualifying periods of Selected Reserve service after 1 October 1980.

- Stafford Loan Program (formerly Guaranteed Student Loans (GSL))
- Federally Insured Student Loans (FISL)
- Perkins Loan (formerly National Defense Student Loan and National Direct Student Loans (NDSL))
- Auxiliary Loans to Assist Students (ALAS)
- Supplemental Loans for Students (SLS)
- Consolidated Loan Program (CLP)
- SMART Loans

b. For each year of satisfactory service in the Selected Reserve, the loan amount to be repaid if the amount of the loan or loans does not exceed the designated maximum portions, the amount of annual repayment is 15 percent of the original balance of the loan or loans, plus accrued interest not paid by the Department of Education, or \$500.00 plus the accrued interest not paid by the Department of Education, whichever is greater.

c. A Soldier will not be eligible for any initial or subsequent loan repayments until he or she— has completed IADT, is MOS qualified or received sufficient training to be deployed. Has been awarded a high school diploma or otherwise qualifies as a secondary school graduate as prescribed by paragraph 1–7.1d and shows proof of such status within the time frame established in paragraph 1–7.1a. Has served 1 year in the Selected Reserve after securing the loan or loans. Has reached the anniversary date of the Selected Reserve contract for SLRP participation.

3. Department of Defense Instructions 1205.21 (Reserve Component Incentive Programs Procedures) paragraph 6.2 states, as a condition of the receipt of an incentive covered by this Instruction, each recipient shall be required to sign a written agreement stating that 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. That agreement shall clearly specify the terms of the Reserve Service commitment that authorizes the payment of the incentive to the member.

4. 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.

5. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

6. Army Regulation 621-202 (Army Educational Incentives and Entitlements) states the MGIB-SR Kicker's purpose is to recruit and retain enlisted Soldiers, WOS and officers in critical specialties, skills, and/or critical units. To qualify for the MGIB Kicker, SELRES members must enlist for a period not less than 6 years, completed inactive duty training, possess a MOS and/or skill to meet the SELRES unit position vacancy critical specialty requirement, continue satisfactory participation in the SELRES for which they contracted, and for USAR complete DA Form 5435-1 (Statement of Understanding- The Selected Reserve Montgomery GI Bill Kicker Program). Termination of the MGIB-SR Kicker incentive will occur should a Servicemember be terminated prior to fulfillment of his or her 6-year contract agreement and obligation and unsatisfactory participation (the date the Soldier attained their 9th unexcused absence, per AR 135-91).

//NOTHING FOLLOWS//