

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 January 2024

DOCKET NUMBER: AR20230003726

APPLICANT REQUESTS: an Exception to Policy (ETP) for payment of his Enlisted Affiliation Bonus (EAB) contract dated 8 October 2015.

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), 8 October 2015
- National Guard Bureau (NGB) Form 600-7-4-R-E (Annex B to DD Form 4 - EAB - Army National Guard (ARNG) of the United States), 8 October 2015
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 27 April 2016
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 27 April 2021
- DA Form 1059 (Service School Academic Evaluation Report), 13 August 2021
- Applicant's Memorandum for Record (MFR), 9 November 2021
- Commander's MFR - Subject: Commander approval for [applicant], 8 March 2022
- Assignment details component screenshot
- Applicant's statement, 11 March 2022
- Texas Army National Guard (TXARNG), J1 Memorandum - Subject: Request ETP for a EAB contract for [applicant], 11 March 2022
- NGB Memorandum - Subject: ETP Approval, EAB for [applicant], 7 March 2023

FACTS:

1. The applicant states:

a. He was owed an EAB back in 2016. During his transition from Active Duty to the TXARNG he was owed a bonus. The only thing holding him back was he was not Military Occupational Specialty Qualified (MOSQ). After following up with his State incentive team, the NGB approved his ETP, however, since the funds from Fiscal Year (FY) 2016 are older than 6 years they cannot process the total payment. It is a \$20,000.00 EAB. NGB is trying to pay out the last \$10,000.00 of the bonus.

b. During his time in the National Guard, he tried to be sent to school to become MOSQ. However, there were limited spots and his time kept getting pushed back. In 2020, he was able to become MOSQ and had to submit an ETP to retain his incentive. He was instructed by his State incentive team to submit a request to the Army Board for Correction of Military Records.

c. While he was waiting to get a response from the NGB he did not realize the time frame. During the course of taking the contract out of terminations it came to his and the unit's attention that his first entitlement never paid out that was due in FY 2016. FY 2016 is now a fiscally closed year meaning the unit/NGB cannot use current year funds to pay out any FY older than 6 years.

d. He is also requesting an ETP due to the signature dates on his addendum being two days apart. He did not know of this violation.

2. A review of the applicant's military records show the following:

a. He enlisted in the Regular Army (RA) on 7 January 2013 in MOS 11B (Infantryman).

b. On 8 October 2015, DD Form 4 shows he enlisted in the TXARNG for a period of 6 years. In connection with his enlistment, the applicant completed and signed a contract for an EAB on 6 October 2015. The Service Representative/Witnessing Official signed the contract/form on 8 October 2015. The NGB Form 600-7-4-R-E states, in pertinent part:

(1) Section II (Eligibility) –

(a) He is affiliating Non-Duty Military Occupational Specialty Qualified (DMOSQ) within substitution rules of Department of the Army Pamphlet 611-21, for the duty position to which he is being assigned that matches the authorized military grade commensurate with the position by skill level into an identified Critical Skill (CS) vacancy in the grade of E-7 or below, in a Paragraph/Line number for a 6-year term of affiliation.

(b) He is affiliating into a valid Automated Unit Vacancy System, Army Automated Reenlistment Reclassification System and the Guard Incentive Management System (GIMS) qualifying valid top loaded vacancy in a Modified Table of Organization and Equipment or Medical Table of Distribution and Allowances unit. He must not be filling an excess, over-strength or manually loaded vacancy and must be assigned in the same Unit Identification Code (UIC): WXJUAA and EAB MOS: 12K (Plumber) for which he is receiving this EAB on his ARNG affiliation start date (Day after his Regular Army (RA) Expiration Term of Service (ETS) Date). Exceptions are not authorized.

(c) He Must sign this EAB addendum on the same date as the execution date of his DD Form 4 to include having the Service Representative/Witnessing Official signatures present in order for this EAB addendum to be considered valid. All signature dates must match the GIMS Control Number request date.

(2) Section III (Bonus Amount and Payments) – The applicant was affiliating into the ARNG for the Six-Year Critical Skill Non-DMOSQ EAB and will receive a total payment in the amount of \$20,000.00 less taxes. The EAB will be processed in two installments upon 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.

(a) The first 50 percent payment will be processed within 180 days after becoming DMOSQ in his EAB MOS within 24 months (plus deployment periods) from his contract start date (Day after his RA ETS date) and have been awarded the MOS on official orders.

(b) The second 50 percent payment will be processed within 180 days after the fourth-year anniversary of his EAB contract start date provided he is still assigned in the same EAB MOS (unless change of MOS was due to convenience of the government) and installment one was previously processed.

(c) The applicant will not receive any EAB payment if he does not meet all EAB eligibility requirements on his contract start date (Date after ETS from Active Duty RA). This EAB contract will be validated by the State Incentive Manager (IM) prior to any EAB payment being processed.

(3) Section V (Continued Receipt) – The applicant would be eligible for continued receipt of his EAB if his EAB UIC and/or MOS is changed due to unit transition, inactivation, relocation, reorganization, or conversion. He may continue to retain his EAB provided he meets all other eligibility criteria, become DMOSQ within 24-months plus any deployment periods, and he is not separated from the Selected Reserve (SELRES).

(4) Section VI (Termination) – The applicant may be terminated from his EAB eligibility without recoupment if:

(a) His EAB addendum is signed before or after the execution date of his DD Form 4 and he received an EAB payment. The effective date of termination will be his contract start date.

(b) He fails to become DMOSQ within 24-months plus periods of deployment if he was Non-DMOSQ due to being cross-leveled for deployment. The 24-month period

begins on the deployment Release from Active Duty (REFRAD) date; or he fails to become DMOSQ within 24-months plus periods of deployment after being moved due to unit inactivation, relocation, reorganization, or converted (unit transformation or reorganization). The effective date of termination is either the date of REFRAD (for cross level deployment) or the date on his transfer order for unit transformation or reorganization.

(c) The applicant may be terminated from his EAB eligibility without recoupment if his EAB addendum is signed before or after the execution date of his DD Form 4 and he did not receive EAB payment. The effective date of termination is his GIMS EAB contract start date; and if he fails to become DMOSQ in his EAB MOS within 24-months from his EAB contract start date (Day after RA ETS). The effective date of termination is his EAB contract start date.

d. On 27 April 2016, DD Form 214 shows he was honorably released from active duty and transferred to his TXARNG unit. He completed 3 years, 3 months, and 21 days net active service this period. Item 11 (Primary Specialty) shows MOS 11B10.

e. DA Form 4836 dated 27 April 2021 shows the applicant extended his 6-year TXARNG enlistment for 5 months and 3 days, which changed his ETS date to 30 September 2022.

f. DA Form 1059 shows he achieved course standards and successfully completed the MOS 12K (Plumber) Phase 2 course on 13 August 2021.

g. On 22 March 2022, DA Form 4836 shows the applicant extended his TXARNG enlistment for an additional 2 years, which changed his ETS date to 30 September 2024. In connection with his extension, he completed and signed a contract for a Reenlistment/Extension Bonus (REB) in DMOSQ 12K.

h. On 7 March 2023, the NGB, Chief, G1 Operations Division, approved the applicant's ETP request to retain the \$20,000.00 EAB dated 8 October 2015. The Chief, G1 Operations Division stated, the applicant was unable to complete his MOS 12K training within the required 24-month timeframe due to limited advanced individual training school seats at Sheppard Air Force Base, TX. However, he did complete 12K MOS training on 13 August 2021. Additionally, the mismatched signature dates on the incentive documents are covered by the ARNG published Business Rule 29b.; therefore, the request is granted. The applicant accepted the incentive offer in good faith and has otherwise fulfilled the obligations in the contract as of the date of this request.

3. In support of his case, the applicant provides:

a. His MFR dated 9 November 2021, wherein he states, due to lack of school availability he was unable to receive his MOS within the time period due to no fault of his own. He is requesting an ETP and had a reservation for school.

b. Commander's MFR - Subject: Commander approval for [applicant], dated 8 March 2022, wherein the commander states, the applicant has completed the 12K MOSQ course as required and is found to be in compliance to receive his original bonus of \$20,000.00. He experienced multiple delays due to no fault of his own.

c. Assignment Details Component screenshot which shows his MOS, position details and number, and projected begin date.

d. TXARNG J1 Memorandum - Subject: Request ETP for a EAB contract for [applicant], dated 11 March 2022, which shows the TXARNG Incentives Office recommended approval of the applicant's ETP request and states, the applicant was unaware of any issues with the signatures dates of his addendum and followed the guidance of his enlisting officials. He also made multiple attempts over the course of his first 2 years in the TXARNG to enroll into the 12K course.

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 contentions, the military record, and regulatory guidance. The Board noted that the applicant made numerous attempts to complete the required training; however, due to circumstances outside the applicant's control, he was not able to timely complete the required training in order obtain the MOS 12K. Documentation available for review reflects the applicant successfully completed training, met EAB eligibility requirements on his contract start date effective 13 October 2021 and is covered by ARNG published Business Rule 29b After due consideration of the case, the Board determined the evidence presented sufficient to warrant a recommendation for relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
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:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. 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 records of the individual concerned be corrected to reflect that applicant was granted an Exception to Policy for payment of his Enlisted Affiliation Bonus (EAB) contract dated 8 October 2015.
2. The Board further determined that any monies due will be in accordance with ARNG and USAR annual SRIP policy.

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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. National Guard Regulation 600-7 (Selected Reserve Incentive Programs (SRIP)) governs policies and procedures for the administration of the ARNG SRIP programs.

a. Paragraph 1-27 (ARNG ETP request) provides that, all ETPs will be initiated by the Soldier and routed through their chain of command to the State IM and the State G1 as established in Chapter 5-3 (State Level). The State Level will evaluate all ETP's received on a case-by-case basis and route them to the appropriate level for final determination.

b. Section III, EAB, Paragraph 2-9 (General) states, under the provisions of Title 37, United States Code (USC), section 308c this incentive is offered to an applicant who is a former enlisted member of an armed force who enlists in the SELRES of an armed force for a period of not less than three years in a critical skill, unit, or pay grade designated by the Secretary concerned, after being discharged or released from active duty under honorable conditions. Soldier must execute a written agreement to serve as enlisted member in the SELRES and meet the eligibility criteria for affiliation as prescribed by governing law, Department of Defense Instruction, Department of the Army, ARNG regulations or as outlined in the current FY SRIP policy.

c. Paragraph 2-10 (Entitlement) states, entitlement for incentive begins on the date of accession to the ARNG. The unit Commander must ensure that Soldiers are counseled when they affiliate, that they will not receive payments immediately under this program. Payments will be processed through personnel pay channels upon verification of all contractual documentation and meeting the terms and conditions outlined in the incentive agreement.

d. Paragraph 2-11 (Eligibility) states, in pertinent part, the applicant must execute a written agreement to serve as an enlisted member in the SELRES. Meet additional requirements directed by DARNG or the current FY SRIP policy.

2. Army Regulation 601-210 (Regular Army and Reserve Components Enlistment Program) prescribes eligibility criteria governing the enlistment of persons, with or without prior service (PS), into the Regular Army (RA), the USAR, and the Army National Guard (ARNG). Paragraph 10-16 (SRIP-EAB) provides, in pertinent part, bonus amount and payment method (lump sum consisting of the entire bonus amount or installments) will be in accordance with ARNG and USAR annual SRIP policy. Entitlement and period of service is computed from the effective date of assignment to the Selected Reserve unit; the day following REFRAD for transitioning Regular Army Soldiers.

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 331 (General bonus authority for enlisted members) provides that, the Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who (1) enlists in an armed force; (2) enlists in or affiliates with a reserve component of an armed force; (3) 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; or under other conditions of service in an armed force; (4) transfers from a regular component of an armed force to a reserve component of that same armed force or from a reserve component of an armed force to the regular component of that same armed force.

5. Title 31, USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U.S. Code, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//