

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 December 2023

DOCKET NUMBER: AR20230003918

APPLICANT REQUESTS: in effect,

- termination of the recoupment of his Selected Reserve Incentive Program (SRIP) Bonus
- correction of his U.S. Army Reserve (USAR) retirement points to show 21 years of creditable service
- personal appearance before the Board via telephone or video

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: a DD Form 149, Application for Correction of Military Record.

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, in effect, that he continued to show up to every Battle Assembly while preparing for a medical board to ensure he received retirement points. He contends that the unit administrator (UA) failed to submit the proper paperwork and he did not notice the error for several years. The applicant further contends that the UA attempted to fix the error for about two years, but the paperwork was always kicked back at the battalion or brigade level. He also volunteered for deployment but was sent home from the mobilization site due to medical reasons. He currently only has 15 years of creditable service due to this error. His spouse lost her job during the COVID 19 pandemic, and they are having financial difficulty.
3. On 9 November 2000, the applicant enlisted in the USAR for a period of eight years. He extended his service on multiple occasions and on 2 December 2014, he reenlisted for a period of six years to begin on 9 November 2015, one day after the completion of his current term of service which ended on 8 November 2015.

4. His contract included an \$8,000.00 SRIP – USAR Reenlistment Bonus Addendum which required the applicant to hold military occupational specialty (MOS) 91L, construction equipment repairer, and be assigned to the 689th Engineer Company, Florida. To retain the incentive, he was obligated to serve satisfactorily for 6 years.

5. Section VIII, Termination, of his Bonus Addendum states that when entitlement to his reenlistment bonus is terminated for any reason listed below, previous bonus payments may be subject to recoupment should he:

- become an unsatisfactory participant
- voluntarily move to a non-bonus unit or MOS, or voluntarily reclassify, his cash bonus payment(s) would terminate; however, his bonus entitlement would not terminate if he moved to another Selected Reserve (SELRES) unit or MOS for normal career progression, because of unit transition, or when his move had been approved by the Chief, Army Reserve (CAR)
- fail to become MOS qualified within 24 months when required to attend a service school, following an involuntary reassignment (due to unit transition) to a bonus authorized MOS and/or unit other than that for which he had contracted
- exceed the maximum period of non-availability; recoupment would be required from the effective date of transfer to the IRR
- fail to extend his USAR contracted term of service to compensate for a period of non-availability within 90 days after return to a SELRES unit; recoupment would be required from the effective date of transfer to the IRR
- separate from a USAR unit for any reason other than by death, injury, illness, or other impairment not the result of his own misconduct
- become a contracted Senior Reserve Officers' Training Corps (SROTC) or simultaneous member of an authorized officer commissioning program drawing a stipend

6. Section IX, Recoupment, of his Bonus Addendum states that if his entitlement to the reenlistment cash bonus is terminated for a reason listed above, except becoming a contracted SROTC or simultaneous member of an authorized commission program drawing a stipend, he may be subject to recoupment action. The amount of recoupment will be determined by the Defense Finance and Accounting Service. This recoupment amount will be calculated as follows:

a. Recoupment will be based upon multiplying the number of months served satisfactorily during the term for which the incentive was authorized by the proportionate monthly dollar amount. This amount will be determined by dividing the total authorized bonus amount by 36 months for the three-year bonus or 72 months for the six-year bonus. The amount of the bonus he is entitled to keep will be subtracted from the total bonus paid to date. If calculations indicate an overpayment, that amount will be recouped. If calculations indicate that he earned more than he received, he will be paid

the difference in a final Installment. Any refund made by him would not affect his period of obligation to serve in the USAR.

b. He understood that calculated overpayments would be recouped, and calculated underpayments would be paid to him.

c. Any refund made by him would not affect his period of obligation to serve in the USAR.

7. The applicant's record contains three annual noncommissioned officer evaluation reports (NCOER) with the following entries for the period from:

- 1 April 2016 - 31 March 2017, "Soldier failed to take an APFT or do height and weight this fiscal year and has been flagged accordingly"
- -1 April 2017 – 31 March 2018, "Soldier failed to attend battle assembly for the APFT"
- 1 April 2018 - 31 March 2019, "refused to take an APFT during this rating period, Soldier was given a Fail score"

8. A review of his Soldier Management System (SMS) transaction record shows that on 8 March 2021, the U.S. Army Human Resources Command (AHRC) received DA Forms 1380, Record of Individual Performance or Reserve Duty Training, for the periods 2017, 2018, and 2019 for review and processing. It is unclear if any action was taken on these documents.

9. The applicant was honorably discharged from the USAR on 24 November 2021.

10. During the processing of this case, the ABCMR requested an advisory opinion regarding the applicant's request to correct his retirement points. On 23 June 2023, the AHRC updated the Retirement Point Accounting System to show the applicant earned 16 years of creditable years of service and had retirement points totaling 3,168 points. The notes indicate credible service for the period 9 November 2020 to 8 November 2021 was added. This correction was provided to the applicant on 27 July 2023. He did not provide a response.

11. The applicant did not provide evidence to show he completed 21 years of creditable service.

12. On 27 November 2023, the Director, Resource Management, USAR Command (USARC), G-1 provided an advisory opinion in this case. This official recommended the

applicant received partial relief. The official provided the following information:

a. The applicant reenlisted in the USAR on 2 December 2014 for a six-year term with a \$8,000 Selected Retention Bonus (SRB) in MOS 91L, with an effective date of reenlistment of 9 November 2015. The USAR Pay Center processed the applicant's SRB lump-sum payment on 9 November 2015.

b. The 689th Engineer Company (Clearance) declared the applicant an unsatisfactory participant when he accumulated 12 unexcused absences during the period from 18 November 2017 to 16 November 2018. Army policy requires the termination and recoupment of a Soldier's incentives when they accumulate nine or more unexcused absences within a 12-month period.

c. The applicant accumulated 36 unexcused absences during the period from 18 November 2017 to 6 November 2021. He accumulated 16 unexcused absences from 16 October 2020 to 17 November 2021, which would be an additional period of unexcused absences that would be applicable to bonus termination.

d. On 10 August 2020, the 689th Engineer Company (Clearance) submitted an Exception to Policy (ETP) request to the USARC G-1 stating that 8 unexcused absences during the period 18 November 2017 to 19 November 2017, and 23 June 2018 to 24 June 2018 were erroneous. The USARC G-1 returned the action to his unit for corrections on 12 August 2020, 23 February 2021, 10 March 2021, and 23 March 2021. The 689th Engineer Company (Clearance) never submitted an administratively correct ETP request to USARC G-1, and the action was closed 15 November 2021 due to the applicant no longer being assigned to the unit.

e. On 11 June 2017, he failed a record Army Physical Fitness Test (APFT) and was flagged for the failure. Army policy states that when Soldiers are under a Suspension of Favorable Personnel Actions (SFPA) flag, all incentive eligibility is suspended. While a Soldier's incentives are suspended, they are not eligible for initial or anniversary incentive payments and not eligible for reinstatement of incentives until the SFPA flag is resolved favorably.

f. At the time of the applicant's USAR discharge, he was still flagged for APFT failure. Due to his separation, his training record contained in the Digital Training Management System (DTMS) is no longer available. However, Army policy requires the termination and recoupment of a Soldier's incentives when they fail two consecutive APFTs during the contract obligation period.

g. In the 689th Engineer Company's request for ETP they stated that the unexcused absences for the period 18 November 2017 to 19 November 2017 and 23 June 2018 to 24 June 2018 were erroneous. The USARC G-1 removed these erroneous unexcused absences from his record.

h. Based on the applicant's attendance record, the USARC G-1 recommends the Army Review Boards Agency change the SRB termination date from 18 November 2017 to 16 October 2020. His DTMS record is not available; therefore, the USARC G-1 cannot justify seeking an earlier termination date than 16 October 2020, though one may exist.

i. Additional research revealed that on 28 August 2007 the applicant's service in the [REDACTED] Army National Guard was characterized as under honorable conditions (general) due to his unsatisfactory performance.

j. Based on the current information provided in this case, the USARC G-1 recommends partial relief by reducing the SRB debt amount. Due to the length of time since the applicant's separation, the USAR Pay Center can no longer process pay-related actions on his archived pay record. The applicant can submit a DD Form 827, Application for Arrears in Pay, to the Defense Finance Accounting System utilizing this ARBA Advisory Opinion as supporting documentation.

13. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that the Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or 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 to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

14. The ABCMR will decide cases on the evidence of record. It is not an investigative body. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.

2. The Board concurred with the conclusion of the advisory official and determined the evidence supports correcting the applicant's record to show his bonus eligibility was terminated on 16 October 2020.

3. The Board noted that AHRC updated the Retirement Point Accounting System to show the applicant earned 16 years of creditable years of service. The Board found no

evidence of additional creditable years of service and determined there is no basis for further correction of his retirement points.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ 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 partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing his bonus eligibility was terminated on 16 October 2020 with recalculation of the amount of the incentive he earned.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to any relief in excess of that described above.

2/15/2024

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CHAIRPERSON

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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. 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 Army Board for Correction of Military Records (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 601-280, Army Retention Program, Chapter 5 - Selective Retention Bonuses for Enlisted Personnel Section states the entitlement portion of this chapter on pay and allowances has been approved by the Department of Defense (DoD) Military Pay and Allowance Committee. These procedures are prescribed by statute in accordance with Title 37, United States Code, sections 331 and 373.

a. The SRB Program provides a monetary incentive that may be offered to retain adequate numbers of qualified personnel in certain reenlistment categories. The SRB Program is a retention incentive paid to Soldiers who reenlist for a minimum of 3 years in a military skill designated as critical.

b. Specific eligibility criteria is announced in the respective MILPER message for each bonus program. Upon reenlistment with an SRB, the Soldier must sign a written agreement. It states the Soldier has been counseled and understands the conditions under which continued entitlement to the SRB may be stopped and a pro rated portion of the advance bonus payments may be recouped. This agreement will also clearly specify the terms of the active service commitment entitled the Soldier to a bonus.

3. Title 10, U.S. Code, section 1552, the law which provides for the Board, states that The Secretary may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or 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 to the claimant on account of his or another's service in the Army, Navy, Air Force, Marine Corps or Coast Guard, as the case may be.

//NOTHING FOLLOWS//