

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20230004916

APPLICANT REQUESTS:

- Remission of his Army National Guard Non-Prior Service Enlistment Bonus debt
- Payment of the remaining bonus he is due

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

- DD Form 149 (Application for Correction of Military Record)
- Sections 3 and 4 of his bonus Addendum

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 contacted about paying back a bonus due to an Army Physical Fitness Test (APFT) failure. He left the Army National Guard (ARNG) eight years ago. In his contract, it is specified APFT failure is not a reason to retract the bonus. What's more, to date, he has not received the full bonus amount. He is unsure of the cause of the error.
3. The applicant's service record contains the following documents:
  - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), shows he enlisted in the ARNG on 3 June 2009.
  - b. A Non-Prior Service Enlistment Bonus Addendum, 17 June 2009, shows he enlisted in the ARNG in the military occupational specialty (MOS) of 25U (Signal Support Systems Specialists) under the 6 x 2 or 8 x 0 enlistment option to receive a 50/50 payment of his bonus in the amount of \$20,000. The addendum states:

(1) He would receive a total bonus of \$20,000. He would receive his first bonus payment of 50 percent of the total authorized amount when he completed initial active duty for training (IADT) and he was awarded the MOS for which he enlisted. He would receive the final payment of 50 percent on the 36th month anniversary of his date of enlistment.

(2) He understood his bonus would be suspended if he was flagged for an adverse action. This did not include failure to maintain body composition standards or APFT failure.

(3) He understood his bonus would be terminated without recoupment if he failed to become a secondary school graduate, accepted a military technician position, accepted a Title 10 or Title 32 Army Guard/Reserve (AGR) tour, became a participant in the simultaneous membership program (SMP)/Reserve Office Training Corps (ROTC) advanced course or received an ROTC scholarship, he accepted a commission as an officer or appointment as a warrant officer, or did not become qualified or awarded as primary the MOS required for his position within 36 months .

(4) He understood his bonus could be terminated with recoupment if he became an unsatisfactory participant, accepted a military technician position, accepted a Title 10 or Title 32 AGR tour, failed to extend within 30 days of his return to active status for any time served in the Inactive National Guard (ING), exceeded the maximum time in the ING, voluntarily transferred into a non-critical skill MOS, did not become qualified in or awarded as primary the MOS required for his position within 36-months, separated from the ARNG for any reason, became a participant in the SMP/ROTC or received an ROTC scholarship, or accepted a commission as an officer or appointment as a warrant officer.

c. Orders 329-231, published by Headquarters, U.S. Army Signal Center and Fort Gordon, 25 November 2009, awarded him the MOS of 25U effective 17 December 2009 or upon completion of training and award of required security clearance.

d. Orders 173-045, published by TXARNG (Texas Army National Guard), 22 June 2015 honorably discharged him from the ARNG and transferred him to U.S. Army Reserve Control Group (Annual Training) effective 2 June 2015 for completion of six years of ready reserve obligation.

e. The applicant's service record is void of documentation showing an exception to policy (ETP) to keep his enlistment bonus, documentation showing he failed his APFT, or his bonus was being terminated with recoupment.

4. On 9 October 2024, Defense Finance and Accounting Service (DFAS) responded to a request for information, stating they could not find an active duty or ARNG military master pay account under the applicant's social security number.

5. On 10 May 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB) provided an advisory opinion for the Board's consideration, which states:

a. The applicant requests a non-prior service enlistment bonus (NPSEB) remission. NGB recommended approval of his request.

b. He states he was contacted to pay back the NPSEB due to APFT failure but he left the ARNG eight years ago. He states APFT failure is not listed as a reason for NPSEB recoupment. He also states full NPSEB payment was never received.

c. The Texas ARNG (TXARNG) Incentive Branch Manager declares the applicant signed a NPSEB on 17 June 2009 for \$20,000 to be paid out in two 50 percent installments. Per the Selected Reserve Incentive Program (SRIP) Policy 07-06, 17 February 2009, chapter 6, paragraph a(1): No bonus amount more than the combined legal maximum of \$20,000 may be offered. Only allowable combinations include non-prior service (NPS) critical Unit Identification Code, NPS Critical Skill, NPS Modification Table of Organization and Equipment, or NPS civilian acquired skills program bonus with the quick ship and/or off-peak option.

d. TXARNG Incentive Branch Manager states the applicant received the baseline \$10,000 NPS critical skill bonus along with the off-peak and quick ship options to reach the \$20,000. However, per the SRIP the off-peak add on is only available to applicants who ship to initial entry training (IET) between 1 October and 31 May. The applicant attended IET in June 2009, outside the off-peak dates, and was therefore only authorized \$15,000 for his bonus. He has an approved ETP from NGB allowing the retention of his bonus and he acknowledges signing an obsolete addendum and agrees to a \$15,000 bonus. His profile in Guard Incentive Management System (GIMS) shows the corrected contract amount for \$15,000 and DFAS shows the first payment of \$7,5000 on 19 March 2010 and a second payment of \$3,800 on 28 June 2013.

e. TXARNG Incentive Branch Manager states the applicant was discharged from the ARNG in June 2015 due to expiration term of service. On 16 March 2023, the Incentives Office notified him of the bonus termination due to consecutive APFT failures, with a termination date of 1 July 2014. Per the SRIP, chapter 14, paragraph I two consecutive APFT failures are subject to termination with recoupment.

f. TXARNG Incentive Branch Manager states the applicant originally signed an erroneous addendum for \$20,000. He received an ETP in which he acknowledged the corrected bonus amount of \$15,000. He received the first two payment of his bonus for a total of \$10,500. He failed two consecutive APFTS, triggering the termination of his bonus with a final payment to him of \$2,000. A closed year memorandum will be required to authorize payment to the applicant.

g. A review of his request was conducted by the ARNG Incentive Oversight Branch and confirms his addendum reads \$20,000 but the incentive in GIMS is only for \$15,000. The NPSEB was to be paid in three installments in accordance with SRIP-07-06 with updates, 17 February 2009. Payments made cannot be validated since the ARNG Incentives Oversight Branch does not have access to the Defense Joint Military Pay System. If accurate, the applicant received \$10,500 and is pending payment of \$4,500. He has two consecutive APFT failures, during the last payment installment.

h. The ARNG Incentives Oversight Branch states the ARNG SRIP refers to two consecutive APFT failures as a qualification for NPSEB recoupment, but it is not listed on his addendum. He was quoting information about the suspension of favorable personnel action for suspension as well, but the addendum is administratively incorrect. If the failures are accurate, then he would be subject to NPSEB termination with recoupment. He appears to have served his full term of service regardless of the failure less any monies potentially owed.

i. The ARNG Incentives Oversight Branch declares the applicant served approximately 62 months before the APFT failure termination date. Therefore, he seems to have a remaining balance for an earned portion period which is now a closed year and based on if the monies paid are accurate.

j. After further review of the applicant's documents provided and discussion with the TXARNG and the ARNG Incentives Oversight Branch, it is the conclusion of NGB that the applicant enlisted with a \$20,000 NPSEB, which was to be paid in two installments however he did not report to IET within the eligible timeframe. He was permitted to maintain the bonus in the amount of \$15,000. The NPSEB was being processed for payment in three installments, but the initial addendum states two 50 percent installments and there is no evidence provided to confirm the change from two installments to three installments. He may have received payments totaling \$10,500 but this was not validated. He had two consecutive APFT failures in 2014. Per the ARNG SRIP two consecutive APFT failures result in NPSEB termination with recoupment; however, he did not receive the final installment and was in good standing at the 36th month when the final payment should have been processed. NGB recommends his NPSEB remission request be granted and that he receive the remaining balance of his \$15,000 NPSEB.

k. The ARNG Incentive Oversight Branch confirmed he may have a remaining balance but did not declare an amount owed. The TXARNG Terminations team determined he is owed a final payment of \$2,000 for the completion of his addendum based on three installment payments.

6. On 9 October 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On the same day, the applicant stated he would be happy to agree to the findings and terms in the advisory to put this behind us.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant signed a Non-Prior Service (NPS) Enlistment Bonus agreement on 17 June 2009 for \$20,000 to be paid out in two 50% installments. However, the applicant did not report to initial entry training within the eligible time frame. The applicant was permitted to maintain the bonus in the amount of \$15,000. The NPSEB was being processed for payment in three installments but the initial addendum states two 50% installments and there is no evidence provided to confirm the change from two installments to three installments. He may have received payments totaling up to \$10,500 but this was not validated. Additionally, the applicant had two consecutive APFT failures in 2014. Per the ARNG SRIP two consecutive APFT failures result in NPSEB termination with recoupment. However, he did not receive the final installment and was in good standing at the 36th month when the final payment should have been processed. The Board agreed with the NGB advisory official's determination that the applicant's NPSEB remission request be granted, and the applicant receive remaining balance of \$15,000 NPSEB.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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|---|---|---|----------------------|
| █ | █ | █ | 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 submitted to the National Guard Bureau (NGB) an exception to policy for payment of his Non-Prior Service Enlistment Bonus based on his 17 June 2009 enlistment in the Army National Guard
- Showing the NGB timely received, processed, and approved the exception to policy request for payment of his \$15,000 incentive

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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 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 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.

3. Army Regulation (AR) 601-210 (Regular Army and Reserve Components Enlistment Program) Section 9-9, Enlistment Program 9C, (Enlistment Bonus, Army College Fund, Loan Repayment Program) This program is available to qualified Non-Prior Service, Prior Service, and Army Civilian Acquired Skills Program applicants enlisting for the minimum term of enlistment, when authorized by Headquarters Department of the Army enlistment incentives message. Previously disenrolled Senior Reserve Officers' Training Corps cadets who were scholarship recipients are not entitled to incentives under this paragraph. Incentives will be offered using REQUEST and message will be updated quarterly or as required. All enlistees must meet the prerequisites before and after enlistment per DA Pam 611-21. Primary Incentive Enlistment Options available for enlistment are available in REQUEST as offered and determined by the Deputy Chief of Staff, G-1. Under this program, enlistees may be eligible for an enlistment bonus. Enlistees who voluntarily or because of any misconduct, fail to satisfactorily complete advanced individual training or one station unit training, will be trained in another Military Occupational Specialty (MOS). They will complete their term of enlistment based upon the needs of the Army, unless separated for administrative or disciplinary reasons. In the above instances, the bonus will not be paid. The bonus is payable at the first duty station after being awarded their MOS.

4. Title 37, USC, Section 331 (General Bonus Authority for enlisted members) The Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who—

- a. Enlists in an armed force;

b. Enlists in or affiliates with a Reserve Component of an armed force;

c. A bonus authorized by subsection (a) may be paid to a person or member only if the person or member agrees under subsection (d)— (1) to serve for a specified period in a designated career field, skill, unit, or grade; or (2) to meet some other condition or conditions of service imposed by the Secretary concerned.

d. A bonus paid under paragraph (1) or (2) of subsection (a) may not exceed \$50,000.00 for a minimum two-year period of obligated service. A bonus under this section may be paid in a lump sum or in periodic installments, as determined by the Secretary concerned.

e. To receive a bonus under this section, a person or member determined to be eligible for the bonus shall enter into a written agreement with the Secretary concerned that specifies—

- the amount of the bonus
- the method of payment of the bonus under subsection (c)(2)
- the period of obligated service; and
- the type or conditions of the service

5. Title 10-, USC, section 1552 (c)(1) 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.

6. ARNG SRIP Guidance for Fiscal Year 2007, 2008, and 2009, 10 August 2007 - 30 September 2009 states for NPSEB, in pertinent part:

a. No bonus amount more than \$20,000 may be offered. Soldiers must ship on or before their original ship date. If the Soldier fails to ship within the time constraints the incentive will be decremented by 50 percent of the overall amount. If the Soldier fails to ship within 365 days of their enlistment date, the incentive will be terminated without payment. The state Military Personnel Office may approve exception in cases where the inability to ship in the prescribed time constraints is due to no fault of the Soldier.

b. The NPSEB will be paid in two installments. The first 50 percent installment will be processed upon successful completion of IADT and verification of MOS qualification. The second and final 50 percent installment will be processed on the third-year anniversary of the Soldier's date of enlistment.



c. The following termination without recoupment reasons are most common but may not be all inclusive.

(1) Separation due to injury or illness that is determined not to be the result of the Soldier's own misconduct and the injury or illness occurred while not assigned to a designated combat zone or combat related operation.

(2) Serves more than one year of an enlisted incentive contract term before accepting commission as an officer, appointment as a warrant officer, becoming a contracted ROTC cadet in the SMP, or accepting any ROTC scholarship.

(3) Failure to obtain duty MOS qualification with 24 months after an involuntary transfer into another skill for the convenience of the government.

(4) Involuntary retirement.

(5) Separation for hardship or sole survivorship.

(6) Involuntary separation from the ARNG as a result of unit inactivation, relocation, reorganization, or a Department of Defense reduction in the ARNG force.

d. A Soldier's incentives will be suspended under the following circumstances:

(1) Enter a period of non-availability.

(2) Becomes flagged for an adverse action (Does not include failure to maintain body composition standards or APFT failure).

(3) Repeat non-consecutive record APFT failure or non-consecutive failure to meet body fat standards within a 12 month period.

d. Reinstatement of bonus eligibility is not guaranteed. Provided Soldiers meet all requirements for participation, payments will be processed effective the date the suspension is lifted or on the adjusted anniversary date of satisfactory creditable service.

e. If entitlement to an incentive is terminated for any reason before the fulfillment of the service described in the member's written agreement, that member shall not be eligible to receive any further incentive payments, except for payments for service performed before the termination date. The following are reasons for termination of the PSEB with recoupment:

(1) Unsatisfactory participation.

- (2) Separates from the ARNG for any reason not addressed in the policy.
- (3) Serves on year or less of an enlisted incentive contract term before accepting a commission as an officer, appointment as a warrant officer, becomes a contracted ROTC cadet in the SMP, or accepts any ROTC scholarship.
- (4) Voluntarily transfers out of the critical unit identification code or critical skill for which bonus is approved.
- (5) Failure to return to active status with approved time period for non-availability or to extend their enlistment to cover the period of times served in an inactive status within 90 days of return to active status.
- (6) Separation from the ARNG due to death, injury, illness, or other impairment that is the result of the Soldier's own misconduct.
- (7) Failure to maintain assignment in a valid, vacant position.
- (8) Voluntary transfer to a non-deploying Tables of Distribution and Allowances (TDA) or any TDA not specifically authorized a bonus under the policy.
- (9) Voluntary retirement.
- (10) Discharge while under any suspension of favorable actions when the suspension of favorable action was not lifted prior to discharge.
- (11) Separation from the ARNG for immediate enlistment into the Active Army when the Soldier enlists into the Active Army either for a period of service that is less than the current ARNG contract or they receive another bonus for the Active Army enlistment.
- (12) Two consecutive record APFT failures or two consecutive failures to meet body fat standards.

//NOTHING FOLLOWS//