

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230005493

APPLICANT REQUESTS: reinstatement of his Student Loan Repayment Program (SLRP) in the Army National Guard and a personal appearance before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
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, he was awarded an SLRP contract then denied the benefit after transferring units because the distance to his unit was causing a hardship for his school and work. He is requesting that the SLRP be honored to the full amount. The state education office claimed he was ineligible to receive the benefit due his transfer not being classified as a hardship transfer. The applicant was still in the same squadron and same military occupational specialty (MOS) at the time of the transfer. Since that time, the applicant has continued to serve and reenlisted another time with numerous merits and achievements, during the course of service. It has been more than three years since the injustice because the applicant was exhausting all other courses of action that were given to him by leadership and research on the subject.
3. The applicant's service record contains the following documents:
 - a. DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), dated 26 June 2014 shows the applicant enlisted in the Army National Guard (ARNG). He remained in the ARNG through DA Forms 4836 (Oath of Extension of Enlistment), dated 25 March 2015 and 24 June 2021.
 - b. NGB Form 600-7-5-R-E (SLRP Addendum), dated 27 March 2015, shows:

(1) The applicant was reenlisting/extending in the ARNG for the six year \$50,000 duty military occupational specialty qualification (DMOSQ) of 11C (Indirect Fire Infantryman) current member (CM) SLRP. In this document, he must meet the following requirements before his yearly CM SLRP payments were processed:

- be DMOSQ in his SLRP MOS
- Must be reenlisting/extending in pay grade E7 or below (his current pay grade was E-4)
- not be listed as 9993 (excess Soldier in his MOS of 11C)
- be assigned to the same CM SLRP MOS in an authorized unit
- have loan(s) with disbursements prior to the CM SLRP signature date
- not under a suspension of favorable personnel action (SFPA)
- must not be serving in an Active Guard/Reserve status or permanent military technician position

(2) The applicant had 13 disbursed loan(s) in the amount of \$45,049 that have been approved in the Guard Incentive Management System by the applicant's assigned State Incentive Manager/SLRP Manager prior to executing the SLRP contract.

(3) The applicant must be reenlisting/extending in pay grade E-7 or below. The applicant's pay grade was E-4.

(4) The applicant must not be listed as 9993 (excess). He must have less than 13 years of time in service.

(5) The applicant may be terminated from his CM SLRP eligibility with recoupment for any of the following reasons:

- erroneous receipt of anniversary payments when not eligible or authorized
- overpayment of anniversary payments

(6) The form lists the reasons for which the applicant's CM SLRP would be terminated without recoupment. The SLRP would be terminated if the applicant was placed in excess code 9993 unless it was due to unit inactivation, relocation, reorganization, or converted.

c. Orders 0000727020.0 published by AUGOE Army Element Joint Force Headquarters, dated 7 October 2020, show the applicant was transferred to a Standard Excess position with a 9993/99 excess code effective 7 October 2020.

d. The applicant's service record was void of documentation showing he was terminated from the SLRP.

4. On 30 January 2024, the Chief, Special Actions Branch, National Guard Bureau (NGB), provided an advisory opinion, which states:
 - a. NGB recommended approval of the applicant's request.
 - b. The applicant requests payment of SLRP incentive for which he had 13 loans in the amount of \$45,049 that had been verified as disbursed Title IV Federal loan(s) not in default, at the time of his approval for repayment under SLRP.
 - c. A review of documents and data within the Guard Incentives Management System shows the applicant signed an SLRP agreement on 27 March 2015 with the Florida ARNG (FLARNG) for a term of six years in an MOS of 11C, which is a critical MOS authorized for SLRP.
 - d. A review of the applicant's claim by the FLARNG incentives office reveals the applicant had a valid SLRP contract, which he signed on 27 March 2015. The applicant was ineligible to receive SLRP in fiscal years (FY) 2016 and 2017 due to receiving an adverse action flag, which prevented payments of his bonus, at the time. The G1 advised the applicant, via certified mail on 10 October 2017 of the situation. The G1 did attempt to submit payment of the bonus on 9 March 2021, but were unable to process the payment due to the restraints put in place by the Barring Act.
 - e. Payment for FY 2021 was not paid due to the applicant being transferred to an excess position, which is a violation of Section VI (5e) of the SLRP addendum that states the SLRP contract may be terminated with recoupment if the Soldier is places into an excess code 9993. The FLARNG supports the applicant receiving payment for FY 2021 due to not having visibility that he was being transferred to an excess position.
 - f. It is the recommendation of NGB that the applicant's request be approved. The applicant did have a valid SLRP contract with the FLARNG and should receive payment for FY 2016, 2017, and 2021. The input provided by the FLARNG supports the recommendation to initiate payment of the applicant's SLRP for FY 2016, 2017, and 2021.
 - g. The opinion was coordinated with the FLARNG incentives office.
5. On 31 January 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 31 January 2024, the applicant responded stating:
 - a. He greatly appreciated all of the time and consideration given to his case. The recommendation, if upheld, would be a huge relief on he and his family.

b. The applicant remained ready and willing to submit any further information or documentation that maybe required or necessary in the determination of his case. He looked forward to the resolution of this matter and to continue to serve this great organization. He had nothing specific to comment on regarding the details of the case, but wanted to again express his gratitude for all of the attention to this matter.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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 requests payment of SLRP incentive for FY16, FY17, and FY 21. He signed a 6-year SLRP agreement on 27 March 2015 with the FLARNG in DMOS 11C, which is a critical MOS authorized for SLRP. He had 13 loans in the amount of \$45,049.00 that had been verified. The Board reviewed and agreed with the NGB's analysis of the applicant's situation that he was ineligible to receive SLRP in FY16, and FY17 due to receiving an adverse action flag which prevented payments of his bonus at the time. Payment for FY21 was also not paid due to the applicant being transferred to an excess position which is a violation of the SLRP addendum, albeit he had no visibility or knowledge that he was being transferred to an excess position. The Board agreed that since the applicant had a valid SLRP contract with the FLARNG and has continued his service, he should receive payment for FY16, FY17, and FY21.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 timely submitted an exception to policy to the National Guard Bureau (NGB) for payment of the FY16, FY17, and FY21 portions of his SLRP incentive
- Showing the NGB timely received, approved, and processed his exception to policy request for payment, as a result of this correction

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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. Army Regulation (AR) 135-7 (Incentives Program, in effect at the time, prescribes policies and procedures for the administration of the Army National Guard (ARNG) and the United States Army Reserve (USAR) incentive programs.

a. Paragraph 5.1 (Student Loan Repayment Program (SLRP)), gives guidance for the administration of the SLRP Public Law 99-145, section 671 (a)(1), authorizes student loan repayment for qualified Selective Reserve (SELRES) enlisted personnel. This incentive is offered to qualifying non-prior, prior, and in-service personnel on signing a contractual agreement for a specified term of service in the SELRES and executing an SLRP Addendum.

b. Paragraph 5.1-6 (Termination), entitlement to the SLRP will stop if the Soldier: (a) receives the maximum SLRP, (b) moves to a non-bonus unit or MOS, (c) becomes an unsatisfactory participant, (d) accepts a permanent civilian position where membership is a condition of employment, (e) fails to extend the contracted term of service for period of non-availability, (f) exceeds the maximum period authored for suspension, (g) separates from the SELRES as an enlisted person for any reason including enlistment or voluntary recall into the active forces, (h) Soldier is ordered to active duty in the Active Guard and Reserve, (i) does not become a high school diploma graduate.

3. National Guard Regulation (NGR) 600-7 (Selective Reserve Incentive Programs), in effect at the time, governs policies and procedures for the administration of the ARNG SRIP programs.

a. Paragraph 1-26 (Termination without recoupment), conditions under which termination without recoupment of incentives is warranted are: (1) fail to obtain high school diploma, (2) fails to ship, (3) involuntary separation as a result of unit transition or directed, (4) separation due to sole survivorship, (5) separation from ARNG or transfer from designated non-bonus position because of death, injury, illness or other impairment that is not the result of misconduct by the Soldier, (6) fails to become duty MOS qualified, (7) ordered to extended active duty, (8) accepts AGR position, (9) accepts a military technician position, (10) discharged for immediate reenlistment in any other component for which no bonus or education incentive is paid, (11) becomes a Simultaneous Membership Program (SMP), (12) accepts a ROTC scholarship, (13) accepts appointment and a commissioned officer or warrant officer, (14) involuntarily

ordered to retire, (15) discharged for hardship, (16) discharged for sole survivorship, or (17) discharged due to injury or illness that occurred or was detected while assigned in a troop program unit status

b. Paragraph 2-35 (Termination of Incentives), incentive eligibility will be terminated when any of the termination reasons listed in paragraph 1-26 apply and that member will not be eligible to receive any further incentive payments, except for service performed before the termination date. Once declared ineligible, termination of an incentive will not affect a Soldier's responsibility to serve their current statutory or contractual service commitment.

4. Title 31, U.S. Code, section 3702, also known as the Barring Statute, 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.

5. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that 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.

//NOTHING FOLLOWS//