

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20230005808

APPLICANT REQUESTS: remission of his debt with Defense Finance Accounting Service (DFAS) DFAS in the amount of \$7,437.08 for the unearned portion of his Army National Guard (ARNG) bonus.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- DA Forms 3349 (Physical Profile)
- DA Form 705 (Army Physical Fitness Test (APFT) Scorecard)
- Notification of Incentive Discrepancies and Exception to Policy (ETP) Process
- Letter from DFAS
- Medical Records
- Department of Veterans Affairs (VA) Benefits
- Self-Authored Letter to DFAS

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:

a. He is requesting a Board review a debt he received in a letter on 21 February 2023 regarding a debt that he was unaware of, which is owed to DFAS in the amount of \$7,437.08 for the recoupment of the unearned portion of his ARNG bonus and \$353.73 is for uncollected Servicemembers' Group Life Insurance (SGLI) payments in which the unit paid for drills that he had already been excused for. He understands this bill and has no issue remitting the payment for the SGLI debt and has already submitted the first payment online so that it is not late. However, he feels this should have been mentioned

to him, while he was still in service or even when he exited service and collected, at that time, not four years later.

b. He is requesting the Board review this decision to recoup his bonus entitlement as he believes this to be not only a mistake but one that should be waived. He attached the letter he received from DFAS to further explain his case and why he believes this bonus recoupment is a mistake and request a review. He also attached his medical records and proof of his profiles.

c. The Board can see in his medical records from 2014 to the present, his service-connected medical conditions as well as the fact that they are continuing issues to this day. Even today, he cannot run very long without having breathing and stomach issues even when taking medication for his disabilities.

d. He is currently seeing VA doctors for the continuing issues that he has had since his deployment, which has changed his life. He is asking the Board to please review his case and understand his position on the case and why he failed his APFT tests. At no point in time was he or his leadership aware that the bonus recoupment office was initiating the debt back in 2015, otherwise this would have been resolved, at that time. Because of his medical health, this issue should have come up during his time of service.

e. As the Board will see in his long medical history, his medical records from his unit and the VA, he has had these issues since his deployment and he has been seeking medical attention for them since 2014, just less than a year after his deployment. Throughout the year of 2014, while seeking medical attention, his health started to drastically go downward. He ended up in the hospital multiple times for severe stomach pain, migraines, and high blood pressure.

f. He would like to mention that at no point in time was he made aware of this recoupment until he received the letter from DFAS on 21 February 2023, which is over 9 years from the time that he was told the presumed debt had occurred without his knowledge. According to his unit, a letter was sent to an old address of his back in 2016 that he no longer was living at. He did not receive this letter due to it being sent to the wrong address and so he was never made aware of the recoupment.

g. He did not get out of the ARNG until 2020. Up until then, at no point in time did anyone in his unit leadership or from the command tell him about the debt, otherwise this would have been resolved seven to nine years ago and prior to him leaving the military. He is a bit concerned that this was not only not brought up to him, while he was still serving, but he was never counseled on this nor was it ever brought to his attention, when he exited the military. Now, nine years later, he is suddenly surprised with this very large debt that he supposedly owes, but he was never told about until now. So now

that he is aware of this situation, he is writing this letter in hopes to find a resolution to this issue, and to find out why this issue would not have been brought to his attention nine years ago.

h. He fully understands that failing consecutive APFT tests in 2014 after deployment initiated this recoupment protocol for the \$10,000 bonus that he received when he reenlisted, during his deployment in Afghanistan. However, when this process was initiated, it should have been brought up to his leadership as well as him so it could have been resolved and explained.

i. In addition, his APFT card and score should have been removed from his record due to his health issues which were directly caused by his prior deployment. The Board will see his second APFT failure was on 18 October 2015, however, he was on a temporary profile on 15 March 2015 in which the command missed. He also had an extended profile and they did not realize it until after the fact, and they had him take the test and the extended profile did not get filed until 20 October 2015, which was two days later. Knowing that he had issues, knowing that he could not take the run as he had been on profiles for a while, he should have had the removed the APFT scorecard.

j. The Board will also note that the unit, as well as the applicant, were unaware of the two consecutive failures to cancel his bonus as the bonus office was not even aware of it until afterwards.

k. To fully understand his case, he must first give the Board a baseline of himself to give the Board a clear view of his situation. He joined the Arizona ARNG (AZARNG) in 2008 as a medic. During his first four years, leading up to his deployment to Afghanistan, he was an incredibly healthy 22 to 26 year-old that competed in marathons, ironman competitions, and biathlons for the AZARNG. During this time, he also earned not only the Expert Field Medical Badge but he also completed the Best Medic Competition, both of which take incredible physical stamina, even by military standards. He also was able to be promoted to sergeant/E-5 as well in that short four year time frame. During that time, he also completed many other training and overseas travels with his unit with no issues with his APFT scores, at the time. He mentions this to give the Board an idea of his overall health and, ability prior to his deployment and will explain the health issues he dealt with, after his deployment, and the effect it had on his APFT.

l. Going back to 2013, the unit came back to Arizona from their deployment to Afghanistan. During their demobilization periodic health assessment, he stated to the doctors that he had some concerns for his health due to some factors, while deployed. When discussing this with them, he mentioned that he was having severe stomach aches, breathing issues, headaches, feeling hot sensations, pain in his back and ankles as well s a few other issues.

m. The unit continued their normal monthly drills and he had mentioned these issues to his leadership who stated he should start to think about seeking medical attention if it worsened. During this time, he continued to try and conduct what he typically did before he went on his deployment, which was to work out one to two times per day and train for marathons and ironman competitions. However, this did not last long as he was no longer able to run due to breathing issues, stomach issues, and feeling like he was overheating, which he discovered shortly after was because his blood pressure was really high.

n. His first record APFT, after his deployment, was on 3 May 2014 and he failed which started this entire situation. However, now that he looks back over this attempt, he believes it was actually a pass as he did receive over 60 points in all categories. At the time, he was told he failed the APFT. His leadership was concerned as much as he was. They knew him for years for being incredibly athletic. They knew he had never had an issue with the APFT before then and knew he had always been chosen to participate in events and competitions for the Army. At this point, he chose to seek medical help from civilian doctors after speaking with his leadership and they all expressed extreme concern about his health.

o. During 2014 and up to 2016, he was eventually diagnosed with hypertension, irritable bowel syndrome, gastroesophageal reflux disease, migraines, as well as several other health issues that could not be properly diagnosed, during that time. His unit had been apprised of what was going on, had noted his visits with the doctors, and had written profiles for him as his doctors stated he should not run due to his health condition as to not further complicate the health issues he was having.

p. On 18 October 2014, he took another record APFT. Now, as he looks back, if the one he took on 3 May 2014 was actually a passed APFT, then he did not need this one, but he also should not have taken this one because of his health issues, at the time. Because he was just receiving medical attention on 18 October 2014 it was not fully understood everything that was going on with his health, so his unit still had him take his APFT as he did not have a profile yet.

q. During this time, his doctors were still running him through test after test to find out what exactly was going on with his health causing all of these issues. He knows for a fact that if he and/or his unit knew of this bonus recoupment issue, at the time, they would not have allowed him to take the APFT due to the understanding of his health issues at the time and to not harm his financial situation with this. But here we are today and now he hopes the Board can take a look and hopefully resolve this issue.

3. The applicant provides the following documents:

a. DD Form 214 shows he entered active duty, as a member of the ARNG, on 31 July 2012 and was honorably released on 14 July 2013. He had service in Afghanistan from 4 November 2012 through 12 June 2013.

b. Physical profile forms show he was on a physical profile on

- 15 March 2015, he was unable to do any of the APFT events, it expired on 14 April 2015
- 20 October 2015, he was unable to do the APFT run, it expired on 19 November 2015
- 23 January 2016, he was unable to do the APFT run, it expired on 22 February 2016

c. His APFT Scorecard shows he took the APFT on:

- 3 May 2014 and passed every event
- 18 October 2014 he failed the run
- 18 October 2015 he failed the run

d. Letter from the AZARNG Incentives Education Services, 22 April 2016 states a discrepancy had been discovered with his bonus incentive contract that must be resolved to avoid eligibility termination. He had received a 6 year bonus of \$10,000 the discrepancy amount was \$7,083.33. He failed two consecutive APFTs taken on 18 October 2014 and 18 October 2015. In accordance with his signed addendum, two consecutive APFT failures was grounds for termination effective the date of his second APFT failure on 18 October 2015 with a recoupment of \$7,083.33. He could request and ETP to National Guard Bureau (NGB) regarding the recoupment.

e. Letter from DFAS, 15 February 2023 informed him he had a debt with DFAS in the amount of \$7,437.06; \$353.73 of the debt was for SGLI premiums paid on his behalf and the remaining portion of the debt was for recoupment of the unearned portion of his ARNG Bonus.

f. Medical records, which show his medical appointments, during his time in the ARNG are available for the Board's review.

g. Letter from the VA, 14 February 2024, shows he has 100 percent service-connected disability.

h. A self-authored letter to DFAS, 13 March 2024, states he was writing to request a comprehensive review of his case. The letter mirrors his letter to the Board and is available for the Board's review.

4. The applicant's service record contains the following documents:

a. DD Form 4 shows he enlisted in the ARNG on 11 January 2008. He remained in the ARNG through extensions of his enlistment.

b. Bonus Addendum, 5 May 2013, shows he was reenlisting for 6 years and would receive a bonus of \$10,000. He acknowledged his bonus would be terminated if he had two consecutive record APFT failures and/or two consecutive failures to meet body fat standards within the contract term. The termination date would be effective on the date of his second APFT failure or second failure to meet body fat standards.

c. Orders 006-636 published by Joint Force Headquarters - Arizona, 6 January 2020, show he was honorably discharged from the ARNG effective 10 January 2020 for expiration term of service. The orders do not indicate he had a disability.

d. His service record is void of his APFT scorecards, medical documents, an ETP to retain his bonus, or an NGB Form 22 (Report of Separation and Record of Service).

5. On 12 February 2024, the Chief, Special Actions, NGB provided an advisory opinion, which states, they recommended disapproval of the applicant's request.

a. He extended in the AZARNG for six years for a bonus in the amount of \$10,000 under the Selective Reserve Incentive Program (SRIP). He failed two consecutive APFTs which initiated a termination of his bonus in accordance with his signed SRIP addendum.

b. A review of his records provided by the AZARNG showed he was administered a record APFT on 18 October 2014 and another on 18 October 2015 and both were failures. The failure of these two APFTs triggered the termination and recoupment of his reenlistment bonus (REB) based on Section VI (Termination) subparagraph (h) of the reenlistment/Extension Bonus addendum which states a Soldier's REB may be terminated with recoupment if he or she fails two consecutive APFTs.

c. Army Regulation (AR) 350-1 (Army Training and Leader Development) section F5 (Army Readiness Program), subparagraph k states that Soldiers must take a record APFT every 6 months for Regular Army and Active Guard/Reserve Soldiers, and annually for all other U.S. Army Reserve and ARNG Soldiers. If a Soldier fails a record APFT, commanders may allow Soldiers to retake the test as soon as the Soldier and commander feel the Soldier is ready to test (not to exceed 180 days). A repetitive APFT failure occurs when a Soldier fails a record test, is provided adequate time and assistance to condition (not to exceed 180 days) and fails again.

d. The applicant provides multiple temporary medical profiles, during the period of 2015 and 2016; however none are within the period that would have prevented him from taking the APFT.

e. It is the recommendation of NGB his request should be denied as he failed to provide any substantial documentation that would have prevented him from taking the APFT during both test periods. He provides multiple pages of medical documents, but none are within the period of the APFTs.

f. He states he was never notified by mail because he had moved and therefore, the letter issued by the unit never reached him. Army/NGB regulations and policy only require that the office send notifications to the last known or available address.

g. Once the bonus was placed in monitor rule failed, a notification of incentive discrepancy and ETP letter was issued to the address he had on file. The letter went out certified mail and was signed for according to records provided by the AZARNG. The letter stated the discrepancy and the potential recoupment.

h. He contacted the incentive office in-person and stated he would return with the appropriate, additional documentation for an ETP (Soldier statement and commander's memorandum) to be submitted to the Incentives Branch. He never provided additional documentation nor are there any records of an ETP being submitted.

i. A second incentive discrepancy and ETP was issued but returned to sender on 27 April 2016. A final termination memorandum was sent out on 30 June 2016, which was also returned to sender.

j. The opinion was coordinated with the AZARNG G1 and the AZARNG Incentives Office.

5. On 1 March 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. On 14 August 2024, he responded asking for an update on his application.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. One potential outcome was to grant relief based on the applicant volunteered to serve as a medic and deploy, however due to health issues after

deployment, 9 years later DFAS request money owed. However, upon further review of the applicant's petition, available military records and National Guard Bureau -Special Actions Branch advisory, the Board concurred with the advising official recommendation for disapproval finding the applicant extended with the Arizona Army National Guard (AZARNG) for a bonus in the amount of \$10,000.00 for a period of six years.

2. The Board noted, the applicant failed two (2) consecutive Army Physical Fitness Test (AFPT) which by regulations initiates a termination and recoupment of his bonus in accordance with his signed SRIP addendum. The Board determined the applicant provided multiple temporary medical profiles during the period of 2015 and 2016, however, the record is absent profiles within the timeline he took his last AFPT. Based on the preponderance of evidence and the advising official opine, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

| | | | |
|---|---|---|----------------------|
| : | : | ■ | GRANT FULL RELIEF |
| : | : | : | GRANT PARTIAL RELIEF |
| : | : | : | GRANT FORMAL HEARING |
| ■ | ■ | : | DENY APPLICATION |

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

[REDACTED]

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 10, USC, section 1552 states, the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice.
3. AR 15-185 (ABCMR) states in paragraph 2-9, the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
4. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.
5. Department of Defense Instruction 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.

6. Updates to the Army National Guard Selected Reserve Incentive Program Policy for Fiscal Year (FY) 2013, (Policy Number 13-01), dated 29 November 2012, states a bonus may be terminated with recoupment if the Soldier receives two consecutive record APFT failures and/or two consecutive failures to meet body fat standards within the contract term. The effective date of termination is the date of the second APFT failure or second failure to meet body fat standards.

7. Army Regulation (AR) 601-210 (Active and Reserve Components Enlistment Program) states under termination of incentives, incentive eligibility will be stopped when any of the termination reasons as listed apply and that member shall 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. Recoupment of Incentives. When relief is not granted through the waiver process from incentives received, the member must refund a pro-rata amount to the Government when termination is due.

//NOTHING FOLLOWS//