

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 August 2024

DOCKET NUMBER: AR20230006013

APPLICANT REQUESTS: remission of the remaining debt associated with a previously received Enlistment Bonus.

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 served in the Army for almost 3 years and has provided repayment of his previously received bonus for approximately 15 years. He notes that this has been an ongoing issue and is currently preventing his family from receiving financial benefits (income taxes) every year. As such he would like the remaining amount owed terminated.

3. A review of the applicant's service records show:

a. On 16 January 2008, the applicant enlisted in the Regular Army to serve as a 31B (Military Police) for 5 years with entitlement to a U.S. Army Seasonal Bonus (Tier II), a cash bonus (\$8,000.00) and the U.S. Army College Fund comprised within the U.S. Army Incentive Enlistment Program (9C). DA Form 3286 (Statement for Enlistment U.S. Army Enlistment Program) completed at the time of enlistment provides acknowledgment of the service obligation associated with the applicant's enlistment. Paragraph 4 (Statement and Conditions) provides that the applicant must stay qualified in his assigned Military Occupational Specialty (MOS) for the duration of his enlistment. Paragraph 7 (Alcohol and Drug Abuse) provides acknowledgment that the illegal use of narcotics, or prescription drugs, or any use of marijuana or other illegal substances by the applicant could lead to criminal prosecution and/or discharge under other than

honorable conditions. Further, if he was identified for either alcohol or drug abuse, including the use or possession of marijuana, appropriate disciplinary and/or administrative action may be taken against him. This may include trial by court-martial or administrative separation from the Army.

b. On or about 21 January 2010, the applicant tested positive for cocaine during a urinalysis.

c. On 29 March 2010, the applicant accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice (UCMJ) for violating Article 112a (Wrongful Use, Possession etc. of a Controlled Substance (Cocaine)). The applicant was orally reprimanded, reduced to the rank/grade of private (PVT)/E-1, and required to perform extra duty.

d. A Criminal Investigation Division Memorandum shows on 31 March 2010, the applicant tested positive for cocaine during a urinalysis.

e. On 19 April 2010, the applicant was notified by his detachment commander that separation action was being initiated under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 14-12c. (Patterns of Misconduct).

f. On 4 June 2010, the Commander, 64th Military Police Company recommended that the applicant be separated from military service with a General, Under Honorable Conditions characterization of service. The applicant was afforded the right to consult with legal counsel. The applicant waived these rights.

g. On 6 July 2010, the 89th Military Police Brigade Commander approved the intermediate commander's request for the applicant to be separated under the provisions of AR 635-200, Chapter 14-12b. with a General, Under Honorable Conditions characterization of service.

h. On 12 July 2010, Headquarters, III Corps and Fort Hood issued Orders Number 193-0128 reassigning the applicant to the U.S. Army transition point pending separation processing.

i. On 26 July 2010, the applicant was discharged from the Army with a general under honorable characterization of service in accordance with AR 635-200, Chapter 14-12c.(2) Misconduct (Drug Abuse). He completed 2 years, 6 months, and 4 days of active service.

4. On 12 March 2024, the Department of the Army, Office of the Deputy Chief of Staff, G-1, Chief, Incentives and Budget Branch – Enlisted Accessions Division, provided an

advisory opinion recommending disapproval of the applicant's request noting that the applicant failed to remain qualified in the incentive MOS for the duration of the 5-year contract in accordance with paragraph 4 of the DA Form, 3286 Annex B. The applicant is subject to repayment of the unearned portion of the \$8,000.00 cash bonus in accordance with Title 37 USC, Section 373: Repayment of unearned portion of bonus, incentive pay, or similar benefit, and termination of remaining payments, when conditions of payment not met.

5. On 13 March 2024, the applicant was provided a copy of the advisory opinion and afforded 15 days to provide comments. As of 13 May 2024, the applicant has not responded.

BOARD DISCUSSION:

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 review based on law, policy, and regulation. Upon review of the applicant's available military records, the Board found the applicant enlisted on 23 January 2008 and in connection with his enlistment, received a reenlistment bonus in the amount of \$8,000. He was discharged on 26 July 2010 for misconduct (drug abuse). The Board reviewed and concurred with the Chief of the Incentives and Budget Branch for the Enlisted Accessions Division of the Office of the Deputy Chief of Staff G-1 finding a lack of supporting documents to support a claim for an error or injustice. The applicant failed to remain qualified in the incentive military occupational specialty for the duration of the 5-year contract in accordance with his contract. Based on this the Board determined relief was not warranted and 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.

10/28/2024

X

CHAIRPERSON

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, USC, 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. AR 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.
3. AR 601-210 (Regular Army and Reserve Components Enlistment Program) Chapter 9 (Enlistment Programs, Options, and Incentives) provides that enlistment programs/options are designed to merge valid Army requirements with personal desires. Paragraph 9-9 (Enlistment Program 9C, U.S. Army Incentive Enlistment Program (Enlistment Bonus) provides that Soldiers paid the enlistment bonus must (unless otherwise directed by HQDA) serve in the designated MOS for the period of enlistment. Persons who do not complete their term of enlistment for which the enlistment bonus was paid, or persons who are not technically qualified in the skill for which the enlistment bonus was paid, may be required to refund the unearned portion of such enlistment bonus. The Soldier must be advised that repayment amounts paid by the Government are subject to Federal and State income taxes as taxable income each year that payment is made.
4. Title 37 USC, Section 373 (Repayment of Unearned Portion of Bonus, Incentive Pay, or Similar Benefit, and Termination of Remaining Payments, when Conditions of Payment not met) provides a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the member fails to satisfy such service or eligibility requirement.

//NOTHING FOLLOWS//