

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 12 December 2023

DOCKET NUMBER: AR20230006017

APPLICANT REQUESTS: remission or cancellation of his debt, related to his failure to fulfill his 4-year active duty enlistment obligation.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 3286-59 (Statement for Enlistment U.S. Army Enlistment Program U.S. Army Delayed Enlistment Program), 22 May 2001
- DA Form 3286-64 (Statement for Enlistment U.S. Army Station/Unit/Command/Area Enlistment Program), 30 May 2001
- DA Form 3286-66 (Statement of Understanding U.S. Army Incentive Enlistment Program), 30 May 2001
- Excerpt DD Form 1966/3 (Record of Military Processing), 30 May 2001
- Enlisted Record Brief (Active Army Enlisted)
- Memorandum – Subject: Separation Under Army Regulation (AR) 635-200 (Personnel Separations Enlisted Personnel), Chapter 14, 2 October 2002
- Memorandum – Subject: Separation Under AR 635-200, Chapter 14, 7 October 2002
- Memorandum – Subject: Separation Under AR 635-200, Chapter 14, 11 October 2002
- DA Form 4856 (Developmental Counseling Form)
- Medical documents
- Department of Veterans Affairs (DVA) letter, 3 February 2023
- Defense Finance and Accounting Service (DFAS) letter, 4 January 2021

FACTS:

1. The applicant states in pertinent part that he enlisted in the military with a close friend. He contests that his three-year enlistment contract guaranteed that he would be stationed in Europe with entitlement to a \$16,000.00 bonus incentive.

a. He notes that his recruiter made a mistake on the bonus contract indicating that his enlistment was for four years rather than the three years reflected on his enlistment contract. To further complicate matters, following his completion of Initial Entry Training,

he received orders to Fort Benning, GA, rather than to Europe as stated in his contract. He contested this action which resulted in his acceptance of nonjudicial punishment (NJP) under Article 15 of the Uniformed Code of Military Justice (UCMJ). Following his assignment and separation from his friend, he was ostracized by his unit when he attempted to explain the situation regarding his assignment overseas.

b. He later sustained injuries to his foot and shoulder for which he is currently being compensated for through the DVA. He suffered from depression because as an injured infantryman, other Soldiers refrained from associating with him. When attempting to address these concerns with his leadership, he was reprimanded and ordered to attend anger management. Subsequently, he was advised he was being recommended for separation for lack of motivation and disrespect. He was forced to sign separation papers which indicated he was being separated for the commission of a serious offense. He was further advised he could be sentenced to jail if he contested the separation. He was denied the opportunity to seek legal advice and became confused with the multiple documents he was required to sign.

c. After being separated from the military he was advised his friend was killed while serving in Afghanistan. This news caused him to abuse alcohol and drugs later resulting in him being diagnosed with a mental health condition. He is currently receiving treatment for this condition and no longer drinks or uses drugs. The only thing lingering over him is the enlistment contract guaranteeing his assignment to Europe and bonus entitlement that was not honored. He failed to complete his enlistment which resulted in a debt. The debt incurred now contains an additional amount (\$25,993.63) in administrative fees and interest. He is now receiving Supplemental Security Income (SSI) and the \$225.00 monthly garnishment is causing a financial hardship for both he and his family. He requests that he be remitted from repaying this debt as determined by many other cases wherein it was determined that the government failed to fulfill their contractual obligation.

2. A review of the applicant's available service records reflects the following:

a. On 29 May 2001, the applicant enlisted in the Regular Army for 3 years to serve within the 11 series Career Management Field (CMF) (Infantry Recruit). The applicant's term of enlistment was later changed to "4 years" as reflected on DD Form 4, Section F (Discharged from Delayed Entry Program/Enlistment Program), section 20a. The applicant endorsed this change and further acknowledged this change on DA Form 3286-64. DA Form 3286-64 provides that the applicant was guaranteed assignment in Europe upon successful completion of all required training. Item 1g. provides that the applicant's term of enlistment was for 4-years. The applicant acknowledged that if his enlistment contract could not be fulfilled through no fault of his own, the alternatives available to him would be provided 30 days to elect an alternative program for which he was qualified for or request separation. If the applicant failed to make an election within

30 days, the claim would be deemed as waived. DA Form 3286-66 provides that the applicant was entitled to a \$16,000.00 cash bonus as an incentive for his 4-year enlistment. DD Form 1966/1 provides that the applicant was single with no dependents.

b. On 5 June 2002, the applicant was determined to be disrespectful to a superior Noncommissioned Officer (NCO). The applicant was subsequently counseled for this action, having a lack of motivation and a lack of military discipline. Over the next 60 days, the applicant received additional counseling for speeding, sleeping on guard duty, missing movement, continued disrespect to an NCO etc. The applicant acknowledged being counseled for these actions by endorsing the DA Forms 4856

c. On 14 August 2002, DA Form 3822-R (Report of Mental Status Evaluation) shows the applicant had normal behavior, was fully alert, fully oriented, his mood was unremarkable, he had clear thinking, and had normal thought content. The mental health provider determined the applicant was mentally responsible for his behavior and could distinguish right from wrong and possessed the mental capacity to participate in administrative actions deemed appropriate by his command.

d. On 11 October 2002, the applicant's commander recommended that he be separated (General, Under Honorable Conditions) from the Army prior to the expiration of his current term of service, under the provisions of Army Regulation (AR) 635-200, Chapter 14, Section III, Paragraph 14-12c, for commission of a serious offense for the specific reasons of two instances of disrespect to superior NCO.

e. On 15 October 2002, the applicant's intermediate commander recommended that he be separated (General, Under Honorable Conditions) from the Army prior to the expiration of his current term of service, under the provisions of AR 635-200, Chapter 14, Section III, Paragraph 14-12c, for commission of a serious offense.

f. On 21 October 2002, the applicant's senior commander directed that he be separated (General, Under Honorable Conditions) from the Army prior to the expiration of his current term of service, under the provisions of AR 635-200, Chapter 14, Section III, Paragraph 14-12c, for commission of a serious offense.

g. On 14 November 2002, Headquarters, I Corps and Fort Lewis issued Orders Number 318-0004 reassigning the applicant to the U.S. Army transition point pending discharge.

h. On 1 December 2002, the applicant was discharged from active duty. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 18 (Remarks) reflects "Member has not completed first full term of service"; item 24 (Character of Service) reflects "General, Under Honorable Conditions"; item 25 (Separation Authority) reflects "AR 635-200, Paragraph 14-12c."; item 28 (Narrative Reason for Separation) reflects

"Misconduct"; item 26 (Separation Code) reflects "JKQ" and item 27 (Reentry Code) reflects "3." He completed 1 year, 6 months, and 2 days of his 4-year enlistment.

3. The applicant provides the following a:

a. DA Form 3286-59 dated 22 May 2001, reflective of item 1d. wherein the applicant acknowledges that in lieu of performing the active duty specified in 1c. (to volunteer to serve on active duty for 2 years in any job assignment specified by the Army, such period to begin in 7 days...), the applicant was eligible to enlist into the Regular Army for a period of 3 years. Item (9) provides that the applicant was not authorized for a cash bonus. Item (10) provides acknowledgment by the applicant that if he enlisted for a guaranteed first assignment of Europe, and acquired a dependent prior to his active duty date, he would no longer be qualified for a guaranteed assignment to Europe.

b. Excerpt of DD Form 1966/3 dated 30 May 2001, reflective of the applicant's enlistment in the Regular Army for a period of 3 years with entitlement to the U.S. Army Station of Choice Enlistment Program, Request Option 19 (U.S. Army Station of Choice) in connection with CMF 11.

c. Enlisted Record Brief (Active Army Enlisted) reflective of the applicant's pertinent personnel information to include assignment history, military occupational specialty (11B), term of enlistment (48 months), pay entry basic date/basic active service date (30 May 2001) and expiration term service date (29 May 2005). The applicant was listed as single with two dependents. On or about 1 March 2002, the applicant completed initial entry training at Fort Benning, GA, and was reassigned to Fort Lewis, WA.

d. Memorandum – Subject: Separation Under AR 635-200, Chapter 14, dated 2 October 2002, reflective of the applicant being notified by his commander that separation action was being initiated for his commission of a serious offense. On 5 June 2002, the applicant was disrespectful to a superior NCO. The applicant notes that this action was repeated twice on this document. The applicant was advised of his right to consult with legal counsel within a reasonable time (not less than 3 duty days)

e. Memorandum – Subject: Separation Under AR 635-200, Chapter 14, dated 7 October 2002, reflective of the applicant being afforded the opportunity to consult with legal counsel. The applicant neither accepted nor declined this opportunity.

f. Medical documents reflective of medical care received by the applicant between August 2002 and September 2021. These documents are provided in their entirety for the Board's review within the supporting documents.

g. DVA letter dated 3 February 2023, reflective of a summary of benefits that the applicant is in receipt of as provided by the DVA. As of 1 December 2022, the applicant was rated as 70 percent disabled.

h. DFAS letter dated 4 January 2021, reflective of the applicant being advised that his original debt of \$9,261.28 was related to his failure to fulfill his enlistment obligation to perform duty through 29 May 2005. In addition, the applicant had accrued \$25,993.63 of interest and administrative fees. At that time, the applicant had paid \$7,192.83 towards the debt incurred.

#### 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 applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows the applicant enlisted for 4 years (not 3 years as he contends). He was guaranteed an assignment in Europe upon successful completion of all required training, with a stipulation that if his enlistment contract could not be fulfilled through no fault of his own, the alternatives available to him would be provided 30 days to elect an alternative program for which he was qualified for or request separation. If the applicant failed to make an election within 30 days, the claim would be deemed as waived. In exchange, he would receive a \$16,000.00 cash bonus as an incentive for his 4-year enlistment. The evidence further shows the applicant was discharged with a general discharge (less than honorable) due to misconduct and only completed 1 year, 6 months, and 2 days of his 4-year enlistment, which led to recoupment of the paid bonus. DFAS indicated they had advised the applicant that his original debt of \$9,261.28 was related to his failure to fulfill his enlistment obligation to perform duty through 29 May 2005.

2. The applicant is advised that if he can justify financial hardship and/or provide explanation of steps taken to resolve his debt, he may reapply to this Board for reconsideration.

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.

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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. Army Regulation (AR) 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 United States Code (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
2. AR 601-210 (Active and Reserve Components Enlistment Program), Paragraph 5-86 (Entitlement) provides that entitlement to the incentive is contingent on successful completion of training and award of a designated Military Occupational Specialty. A Soldier is entitled to the incentive in effect on the date of initial contract in the Delayed

Entry Program (DEP). Any increase or decrease in the award level made after enlistment in the DEP or after enlistment on active duty will not change the soldier's award level.

a. Paragraph 8-6 (Correction of Term of Enlistment) provides that an error made in processing an enlistment may indicate that the term of enlistment shown on DD Form 4 is for a longer term than intended. If so, then unit commanders will submit a request for correction of enlistment agreement through military channels to the U.S. Army Human Resources Command (AHRC). The request will contain evidence to support the claim of error in the period of enlistment shown on the DD Form 4, DD Form 1966, DA Form 3286 or other documents in support of the claim. Every effort will be made to correct the claim once justified and commander has the authority to approve.

b. Paragraph 9-9 (Enlistment Program 9C, (U.S. Army Incentive Enlistment Program (Enlistment Bonus, Army College Fund, Loan Repayment Program) provides that persons who do not complete their term of enlistment voluntarily or because of misconduct will be required to refund the percentage of the bonus that corresponds to the unexpired part of the total enlistment period (such as the unearned portion of the bonus).

c. Paragraph 9-8 (Enlistment Program 9B, U.S. Army Station – Unit Command Area Enlistment Program) provides that this program is available to qualified non-prior service applicant's enlisting for a minimum term of enlistment authorized by REQUEST. Under this program, enlistees are guaranteed a specific military occupational specialty or career management field, a first assignment to a station, unit, command or area. Applicants are advised:

1) If the station, unit, command, or area to which a person is assigned or attached under the provisions of this program is deployed, relocated, reorganized, or re-designated, the person will remain with the unit of assignment. No guarantee of "location" is made when enlisting for a specific area, unit, or command.

2) If the station, unit, command, or area is inactivated, disbanded, or discontinued, the person will be subject to reassignment according to the needs of the Army.

3) Person may be subject to periods of temporary duty on an individual basis away from the station of choice for which enlisting. Such periods of temporary duty will not count against guaranteed stabilization period.

4) Persons may receive initial assignment at interim location to unit undergoing training. That unit will deploy to the station of choice upon successful completion of training. Stabilization starts upon arrival at station.

//NOTHING FOLLOWS//