

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 March 2024

DOCKET NUMBER: AR20230006916

APPLICANT REQUESTS:

- reconsideration of his previous request for reversal of the National Guard Bureau's (NGB) Exception to Policy (ETP) denial to retain a Prior Service Enlistment Bonus (PSEB) of \$17,000.00
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Email Correspondence
- Congressional Liaison Response Letter
- Congressional Applicant Personal Statement
- Personal Statement
- Larionoff v. United States, 365 F. Supp. 140 (D.D.C. 1973)
- Army Board for Correction of Military Records (ABCMR) Docket Number AR20210010570, 9 November 2021
- Memorandum, Subject: Applicant Enlistment Bonus, 1 March 2023
- Student Loan Repayment Program Addendum, 14 February 2019
- Reservation Packet for Military Occupational Specialty (MOS) Reclassification to 38B (Civil Affairs Specialist)
- DA Form 5435 (Statement of Understanding the Montgomery GI Bill Selected Reserve Addendum), 14 February 2019
- DA Form 5261-5 (Selected Reserve Incentive Program (SRIP) – United States Army Reserve (USAR) PSEB) Addendum, 14 February 2019
- Certificate and Acknowledgement USAR Service Requirements and Methods of Fulfillment Addendum, 14 February 2019
- DD Form 1966 (Record of Military Processing – Armed Forces of the United States), 14 February 2019

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20210010570 on 9 November 2021.

2. The applicant states:

a. While deployed to East Africa from 2020-2021, he submitted a packet to the ABCMR to get a ruling on the repeated denial of his enlistment bonus. On 6 September 2022, the Board denied payment and he was notified of the decision on 27 December 2022.

b. In the case of *Larionoff v. United States*, 365 F. Supp. 140 (D.D.C. 1973) (Included in the packet), the court ruled in favor of the Service Members (SM) being paid a bonus that was written in their contract. The SMs in that case were told if they re-enlist for a specific career field for a total of 6 years, they would receive a bonus of \$10,000.00. Upon completion of their schooling, the U.S. Navy declined to pay their bonus bringing about the lawsuit. The court ruled that the second contract, comparable to his bonus addendum, was legal grounds to pay the SMs what was entitled to them in terms of their contract.

c. *Larionoff v. United States* draws a lot of similarities to his case. He signed a 6-year contract for MOS 38B, in which he would receive a total of \$17,000.00 once he completed the MOS reclass. He completed the training, additionally, he deployed to a combat zone as a Civil Affairs Team Sergeant, completed Airborne School, and the Senior Leader Course, in order to perform with the highest proficiency.

d. The ABCMR stated "Department of Defense Instruction (DoDI) 1304.31 (Enlisted Bonus Program) prohibits a Soldier, who has previously received an enlistment bonus, from receiving subsequent enlistment bonuses." When he looked at DoDI 1304.31, section 4 (4)(c) states "Members may receive more than one Selective Retention Bonus (SRB), but the total combined SRB payments over a career must not exceed \$360,000.00 for Regular Component members and \$180,000.00 for Reserve Component members."

e. Lastly, he reached out to First Sergeant (1SG) W- D-, formally the Senior Guidance counselor at the Portland, Maine, Military Entrance Processing Station (MEPS) where he enlisted. He included the Memorandum for Record as well as the documents referenced in the memorandum. It outlines the process in which he received the bonus paperwork, in this case, it is audited several times by the Army before a contract is presented. Based on what he has from MEPS and the DoDI 1304.31 guidance, both show that he is eligible to receive his contractual bonus.

3. A review of the applicant's available service record shows:

a. On 27 July 2007, he enlisted in the Vermont Army National Guard (VTARNG) for a period of 8 years in MOS 11B (Infantryman). In conjunction with this enlistment, National Guard Bureau (NGB) Form 600-7-1-R-E (Annex E to DD Form 4 Non-Prior Service Enlistment Bonus (NPSEB) Addendum ARNGUS) was completed showing he enlisted to serve at least 6 years (under a 6X2 enlistment) for a \$20,000.00 enlistment bonus. He endorsed this document with his signature and a Bonus Control Number (BCN) was assigned by the certifying official.

b. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment) shows he extended his enlistment with the VTARNG for a period of 1 year on 11 February 2018.

c. NGB Form 22 (Report of Separation and Record of Service) reflects an honorable discharge from the VTARNG for enlistment in the USAR with service from 27 July 2007 to 13 February 2019 for a net service this period of 11 years, 6 months, and 17 days.

d. On 14 February 2019, he enlisted in the USAR for a period of 6 years. In conjunction with this enlistment, Reserves Annex – Certificate and Acknowledgment USAR Service Requirements and Methods of Fulfillment was completed showing in Section 4 (Service Obligation), item 2, the applicant was enlisting under Prior Service for training in MOS 38B for a \$17,000.00 PSEB. He read and understood the applicable information in Army Regulation (AR) 601-210 (Regular Army and Reserve Components Enlistment Program) for the enlistment program he was enlisting for. Additionally, DA Form 5261-5 was completed showing he was enlisting for 6 years with entitlement to a \$17,000.00 PSEB. The initial 50 percent would be paid at the time of enlistment and the remaining 25 percent would be paid at the end of the 2nd and 4th year of service in the USAR. The applicant at the time Sergeant First Class D- W- endorsed the addendum. However, it is void of a BCN.

e. On 13 August 2019, Headquarters, 99th Readiness Division (USAR) issued Orders Number 19-225-00025 which awarded him primary MOS 38B and withdrew MOS 11B.

f. On 2 December 2020, the United States Army Reserve Command (USARC) Deputy Chief of Staff, G-1, Chief, Manning Division, disapproved his request for an ETP stating, in effect, because the applicant previously received a \$15,000.00 NPSEB in connection with his 26 July 2007 ARNG enlistment. DoDI 1304.31 prohibits a Soldier, who has previously received an enlistment bonus, from receiving subsequent enlistment bonuses. In this case, the accessioning agency failed to verify PSEB eligibility. USARC G-1 does not have the authority to grant an exception in cases where DoDI is concerned.

g. On 9 November 2021, this Board denied the applicant's request stating, after reviewing the application and all supporting documents, the Board found that relief was not warranted. Board members thoroughly reviewed the applicant's statement, supporting evidence, and the service record. Board members also reviewed and concurred with the USARC G1 's determination that the applicant previously received a \$15,000.00 NPSEB in connection with his 26 July 2007 ARNG enlistment. DoDI 1304.31 (Enlisted Bonus Program) prohibits a Soldier, who has previously received an enlistment bonus, from receiving subsequent enlistment bonuses. Based on a preponderance of evidence, the Board determined that the decision by the USARC G-1 to deny him payment of the PSEB was not in error or unjust. He was ineligible for the PSEB.

4. The applicant provides the following:

a. Email correspondence with the Army Review Boards Agency (ARBA) Congressional Liaison office for confirmation of receipt of submission for application for correction of military records on behalf of the applicant.

b. ARBA Congressional Liaison Response letter confirming receipt of the application.

c. Congressional Privacy Act Release Form authorizing the office of Senator E- W- to act on behalf of the applicant for assistance with the application for correction of military records.

d. Applicant personal statement to Senator E- W- reiterating his personal statement to the Board for reconsideration of his previous request for payment of his enlistment bonus.

e. *Larionoff v. United States*, 365 F. Supp. 140 (D.D.C. 1973), showing the court ruled in favor of the SM being paid a bonus that was written in their contract. The SMs in that case were told if they re-enlist for a specific career field for a total of 6 years, they would receive a bonus of \$10,000.00. Upon completion of their schooling, the U.S. Navy declined to pay their bonus bringing about the lawsuit. The court ruled that the second contract, comparable to his bonus addendum, was legal grounds to pay the SMs what was entitled to them in terms of their contract. Of note, the U.S. Navy refused to pay because the skill in which the SMs reenlisted for was no longer considered critical.

f. Memorandum, Subject: Applicant enlistment bonus, dated 1 March 2023 wherein 1SG D- W- states in pertinent part, the applicant's packet processed on 14 February 2019 for 6 years as a 38B into the USAR. All prior service applicant packets are required to be reviewed by a guidance counselor and after a call to the Recruiting Operations Center (ROC) for them to call the Department of the Army (DA)

for a job. Under this rule, he and his team in Portland do not control the incentives that come with the enlistment. DA and the ROC both validate what comes with each enlistment for prior service enlistments. The applicant's enlistment was verified, and his incentives were prior service bonus of \$17,000.00, prior service kicker of \$200.00, and prior service student loan repayment of \$20,000.00.

g. Student Loan Repayment Program Addendum, dated 14 February 2019, previously considered under ABCMR Docket Number AR20210010570.

h. Reservation Packet for MOS Reclassification to 38B, previously considered under ABCMR Docket Number AR20210010570.

i. Statement of Understanding - the Montgomery GI Bill Selected Reserve Addendum, dated 14 February 2019, previously considered under ABCMR Docket Number AR20210010570.

j. DD Form 1966, dated 14 February 2019, showing the applicant was entitled to a \$17,000.00 PSEB for reclassifying to MOS 38B.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was 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. Upon review of the applicant's petition, available military records and the applicant previously receiving a NPSEB, determined the applicant served in good faith and was not at fault for being unaware that he was not entitled to the bonus. Based on this, the Board granted relief for payment of his PSEB.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, 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.

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 that the evidence presented was sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by showing the applicant is entitled to be paid the Prior Service Enlistment Bonus (PSEB) in the amount of \$17,000.

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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) 601-210 (Regular Army and Reserve Components Enlistment Program) states that Army G-1 has operational control of BCNs and Retention Training Division (RTD) has administrative control of the BCNs. Proper component directives will govern reporting requirements for subordinate elements of the ARNG and the Army Reserve. Soldiers participating in or terminated from an incentive program governed by this regulation will be reported. Paragraph 10-13 (SRIP – PSEB) is a cash bonus that is offered to eligible applicants enlisting in the Selected Reserve and complying with all of the following eligibility requirements:

(1) Received an honorable discharge or honorable release at the conclusion of all prior periods of military service.

(2) Has completed no more than 16 years of total military service. The "total military service criteria" includes inactive Reserve time in the IRR or ING.

(3) Soldiers also may not be released from one selected RC for the purpose of enlistment into a different selected RC for the PSEB. Soldiers who are separated within 90 days of their contracted expiration term of service are exempt from this restriction and are considered to have completed their prior obligation.

(4) Possesses a bonus MOS or accepts training into an MOS as announced by Headquarters Department of the Army (HQDA) that is the same required by the Selected Reserve unit position vacancy. In the case of PS in the USAR or ARNG, Soldier must have previously qualified in the MOS. Soldiers enlisted as "will train" have 24 months to acquire the critical MOS.

(5) Meets the eligibility criteria for enlistment in the USAR as a PS applicant as prescribed by this regulation.

(6) Completes a PSEB annex to DD Form 4 for ARNG and USAR as part of the enlistment agreement.

(7) Upon enlistment, will qualify for the Selected Reserve unit position vacancy for assignment, and must be duty MOS qualified for the position for which enlisting, or agree to retrain in a critical MOS vacancy announced by HQDA or per respective RC annual SRIP that is the same required by the position vacancy for which enlisting.

(8) Entitlement to the initial payment of a PSEB will not exceed one-half the amount of the total bonus for a 6-year contract, unless a lump sum payment is specifically approved by the respective RC under the annual SRIP program. The remainder of the two authorized the 6-year reenlistment or extension bonus payments

are paid as determined by the incentive skill list updated by Deputy Chief of Staff, G-1, and reviewed by the Assistant Secretary of the Army (Manpower and Reserve Affairs) annually before the start of each fiscal year.

2. DODI 1304.31 (Enlisted Bonus Program) establishes policy, assigns responsibilities, and prescribes procedures for a bonus payment, in accordance with Title 37, United States Code (U.S.C.), Section 331 to persons or members who transfer between Regular and Reserve Components of the Military Service.

a. Section 3.1b (Eligibility) states the Secretaries of the Military Departments may pay a bonus to a person or member who:

(1) Signs an agreement with the Secretary of the Military Department concerned to serve on active duty or in an active status for a specified period: (a) In a designated military specialty or skill, career field, unit, grade; or (b) To meet other condition(s) imposed by the Secretary of the Military Department concerned.

(2) Successfully completes training and becomes qualified in a designated skill or career field, if completion of such training and technical qualification forms the basis for which the bonus is paid.

(3) Is not in receipt of an affiliation, enlistment, reenlistment, retention, or transfer bonus for the same period of service.

b. Section 4.3. (Prior Service Reenlistment Bonus) states, the Secretary of the Military Department may offer a prior service reenlistment bonus to individuals with previous military service who reenlist in a Regular or Reserve Component of a Military Service after a break in active duty or reserve duty. In addition to the eligibility requirements in section 3.1b, an individual must not have previously received, or currently be entitled to, a Selective Reenlistment Bonus in accordance with this issuance or a critical skills retention bonus.

3. DODI 1205.21 (Reserve Component Incentive Programs Procedures), currently in effect, requires each recipient of an incentive to sign a written agreement. The agreement must clearly specify the terms of the Reserve Service commitment that authorizes the payment of the incentive.

4. AR 15-185 (Army Board for Correction of Military Records (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//