

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 January 2024

DOCKET NUMBER: AR20230007064

APPLICANT REQUESTS: correction of his service record to reflect the following:

- Remission or cancellation of indebtedness in the amount of \$2,777.78
- Amendment of Orders Number 19-182-00002 to show effective 2 December 2019 vice 29 July 2019
- A personal appearance before the Board via telephone or video

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 267-0272, 23 September 2016
- Memorandum, Subject: Appointment as a Reserve Commissioned Officer of the Army, dated 19 September 2016
- Officer-Warrant Officer Affiliation Bonus Addendum, 12 October 2016
- DA Form 4187 (Personnel Action), 30 November 2018
- Orders Number 19-182-00002, 1 July 2019
- Defense Finance and Accounting Service (DFAS) Letter (illegible)
- DFAS Debt Statement, 8 February 2023
- Congressional Privacy Release Authorization, 17 February 2023
- DFAS Response Letter, 1 March 2023
- Pay.gov Receipt, 3 March 2023
- DFAS Debt Statement, 6 March 2023
- Pay.gov Receipt, 30 March 2023
- Email correspondence
- Military Service Obligation and Troop Program Unit (TPU) Obligation Worksheet
- Request Pertaining to Military Records

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, in pertinent part, he requested a discharge date of 2 December 2019 in order to fulfill his contractual service obligation, as shown on his DA Form 4187 submitted as evidence. Although his request was approved by his command, the U.S. Army Reserve Command discharged him on 29 July 2019 instead which resulted in invalidation of his service obligation and creation of a debt.

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

a. On 16 May 2009, he was appointed as a Reserve commissioned officer and executed an oath of office.

b. DA Form 1059 (Service School Academic Evaluation Report), dated 7 November 2014 shows he attended and completed the Civil Affairs Qualification Course.

c. On 23 September 2016, the U.S. Army Installation Management Command, Headquarters, United States Army Garrison, Fort Bragg, issued Orders Number 267-0272 reassigning him to the U.S. Army transition point for transition processing and honorable discharge from the Regular Army, effective 1 December 2016.

d. On 11 October 2016, the U.S. Army Human Resources Command (HRC), issued a Memorandum for Appointment as a Reserve Commissioned Officer of the Army in the rank/grade of captain (CPT)/O-3.

e. On 12 October 2016, the Written Agreement – United States Army Reserve Officer/Warrant Officer Affiliation Bonus Acknowledgement was completed showing he agreed to serve in the Selected Reserve (SELRES) in the critical officer/warrant officer skill military occupational specialty (MOS) 38A (Civil Affairs Officer) with entitlement to a \$20,000.00 affiliation bonus for a period of 3 years.

f. On 17 October 2016, HRC issued Orders Number C-10-614097 appointing him as a Reserve commissioned officer and assigning him to A Company, 404 Civil Affairs Battalion, Fort Dix, NJ, effective 2 December 2016.

g. DD Form 214, ending 1 December 2016 reflects an honorable discharge from active duty for early separation. Item 12 (Record of Service) shows service from 7 June 2009 to 1 December 2016 for a net active service this period of 7 years, 5 months, and 25 days.

h. On 1 July 2019, Headquarters, U.S. Army Reserve Command, issued Orders Number 19-182-00002 honorably discharging him from the United States Army Reserve, effective 29 July 2019, by reason of unqualified resignation.

4. The applicant provides the following:

a. DA Form 4187, dated 30 November 2018 for unqualified resignation as a Reserve Officer of the Army to pursue a civilian career upon the completion of his obligation and request for a discharge date of 2 December 2019.

b. DFAS Letter (illegible).

c. DFAS Debt Statement, dated 8 February 2023 showing his balance for recoupment of an unearned portion of his Reserve or National Guard bonus in the amount of \$2,777.78.

d. Congressional Privacy Release Authorization, dated 17 February 2023 authorizing Pennsylvania Representative C- H-, to intervene on his behalf for assistance with this application request.

e. DFAS Response Letter, dated 1 March 2023 replying to Representative C- H- request concerning the applicant's indebtedness with the Department of Defense stating in pertinent part:

(1) The inquiry concerns the applicant's concerns regarding a debt notification he received stating that he owes the U.S. Government \$2,777.78 as a result of a bonus recoupment. He also stated that he completed his contractual agreement by serving 3 years and submitted documentation to support it. He stated that his resignation date was 2 December 2019, which he requested in order for him to fulfill his contractual obligation.

(2) However, a review of the applicant's record shows that the debt, in the principle amount of \$2,777.78, remains valid. No interest or fees have been applied to the debt. There are no collections toward the debt. The current debt balance is \$2,777.78.

(3) He enlisted in the U.S. Army Reserve on 2 December 2016, for an obligated service commitment of 36 months and was entitled to an Officer Affiliation Bonus (OAB) for \$10,000.00, which he received in full. His bonus was terminated effective 29 July 2019, and his unit reported that he satisfactorily performed 31 months of his contract.

(4) Department of Defense Financial Management Regulation (DoD FMR), Volume 7A, Chapter 9, paragraph 090106 states, in part, that recovery of the unearned portions of an enlistment or reenlistment bonus is required when the member does not complete the terms of enlistment or reenlistment, therefore recoupment is required and proper.

(5) They act solely as the debt collector, not the originator and are unable to cancel the bonus based on his claim that the debt in being collected in error. If the applicant disagrees with the bonus recoupment debt, he must contact his bonus incentive manager, or his former unit must submit proper documentation to them via the Case Management System (CMS). Once they receive the documentation, they will revisit the claim.

(6) If he is unable to obtain official documentation from his former unit, his only recourse is to petition the Army Board for Correction of Military Records. If he receives a favorable determination from the Board, all funds collected will be refunded, to the extent of the correction.

(7) Furthermore, the applicant requested that the U.S. Army Reserve Command create an amendment to his discharge orders from his command. They recommend that he contact his prior U.S. Army Reserve Command directly regarding the amendment of his discharge orders. As stated above, they act solely as the debt collector and not the originator. They are not authorized to adjust his military records.

f. Pay.gov Receipt, dated 3 March 2023 showing he completed a payment in the amount of \$79.56.

g. DFAS Debt Statement, dated 6 March 2023 showing the original debt in the amount of \$2,777.78, a payment in the amount of \$79.56, and the total balance of \$2,698.22.

h. Pay.gov Receipt, dated 30 March 2023 showing he completed a payment in the amount of \$79.56.

i. Email correspondence showing his attempts to obtain the contact information from his unit command for his bonus incentive manager.

j. Military Service Obligation and TPU Obligation Worksheet showing the date of initial entry into the military and his statutory service obligation.

k. Request Pertaining to Military Records showing he requested the bonus incentive manager information.

5. On 14 September 2023, the Office of the Deputy Chief of Staff, G-1, Chief Officer Career Policy Branch, provided an advisory opinion recommending approval of the applicant's request stating, in effect:

a. The applicant is appealing the recoupment action of funds for his remaining Selective Reserve service obligation incurred by receipt of the Army Selected Reserve (SELRES) OAB.

b. A review of his Department of the Army records by Department of Manpower and Personnel Management indicate he separated from the Regular Army effective 1 December 2016 and was appointed a Reserve commissioned officer in Civil Affairs effective 2 December 2016. The records also reveal he signed a written agreement to receive a \$20,000.00 SELRES OAB, incurring a service obligation of three years of service in the United States Army Reserve. The three-year service obligation began on 2 December 2016 and expired on 1 December 2019.

c. He submitted an unqualified resignation on 21 November 2018 and requested an effective date of 2 December 2019. His commander and higher chain of command each recommended approval of the resignation, with Major General [REDACTED] approving the resignation on 5 April 2019. However, the U.S. Army Reserve Command (USARC) published orders discharging him, effective 29 July 2019.

d. The applicant complied with all requirements of the SELRES OAB agreement and had no control of the effective date in the orders published by USARC. Therefore, it must be concluded that his remaining SELRES service obligation was excused for the convenience of the government.

e. Based on the discussion in paragraphs 2 and 4 above, recommend approval of his request for waiver of recoupment of the funds for the unserved period of SELRES service.

6. On 15 September 2023, the applicant was provided a copy of the advisory opinion and provided an opportunity to respond. He provided a rebuttal stating, in effect, he does not have any additional comments for the advisory opinion and will await the ABCMR decision.

#### BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. 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/was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The applicant is appealing the recoupment action of funds for his remaining Selective Reserve (SELRES) service obligation incurred by receipt of the SELRES Officer affiliation Bonus (OAB). The applicant separated from the Regular Army effective 1 December 2016 and was appointed a Reserve commissioned officer in Civil Affairs effective 2 December 2016. He signed a written agreement to receive a \$20,000 OAB incurring a service obligation of three years of service in the USAR. The 3-year service obligation began on 2 December 2016 and expired on 1 December 2019.

b. The applicant submitted an unqualified resignation on 21 November 2018 and requested an effective date of 2 December 2019. His chain of command recommended approval of the resignation, and the separation authority approved the resignation on 5 April 2019. However, U.S. Army Reserve Command (USARC) published orders discharging the applicant effective 29 July 2019. The Board found no error in the discharge date.

b. The Board reviewed the USARC advisory official's finding that the applicant complied with all requirements of the SELRES Officer Affiliation Bonus agreement and had no control of the effective date in the orders published by USARC. Therefore, it must be concluded that his remaining SELRES service obligation was excused for the convenience of the government. As a result, the Board determined relief is warranted in the form of an approval of the applicant's request for waiver of recoupment of the funds for the unserved period of SELRES service.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing the applicant submitted an exception to policy requesting a remission or cancellation of indebtedness in the amount of \$2,777.78
- the U.S. Army Reserve Command timely received and approved his exception to policy to cancel the debt

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to changing his discharge date to 2 December 2019.



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. Department of Defense Financial Management Regulation states:
  - a. Paragraph 5.2.1 – debt collection offices (DCO) must issue the initial debt notification letter to the debtor within 5 working days following final confirmation of the existence and validity of the debt, the basis of indebtedness, and the amount of the debt. Only one due process debt notification is required to be issued to the debtor. DCOs may issue additional demand for payment letters at 30-day intervals after the date of the initial debt notification letter when deemed appropriate by the DCO.
  - b. Paragraph 5.2.2 - DCOs must exercise care to ensure the debt notification letter is dated the same day the letter is mailed, via the U.S. Postal Service (USPS), to the debtor's last known address or hand-delivered to the debtor. The DCO is required to retain a copy of the debt notification letter as part of the debtor's file. Salary and/or administrative offset may only begin after due process has been provided to the debtor. A DCO is not prohibited from issuing a written demand for payment to the debtor prior to issuing the more formal due process debt notification letter. A demand for payment is typically an abbreviated written request for voluntary repayment of the debt and is not considered sufficient notice of due process. A demand for voluntary repayment may be issued electronically to the debtor, while the formal debt notification must be delivered by the USPS.
3. Army Regulation (AR) 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.
4. Department of Defense Instruction 1304.34 (General Bonus Authority for Officers) provides that the military departments may pay a bonus pursuant to the Officer Bonus Program when a service member signs a written agreement with the Secretary of the Military Department concerned to serve for a specified period in a designated career field, skill, unit, or grade, or meet some other condition or conditions of service imposed by the Secretary.



5. AR 600-8-105 (Military Orders) states, only the organization that published the original order may amend, rescind, or revoke the order. Commanders may revoke award orders if issued by another headquarters only when authorized under AR 600 – 8 – 22. An order may be corrected by the organization that published the original order to show the true state of affairs existing at the time the original order was published.
6. 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.
7. 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//