

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 April 2024

DOCKET NUMBER: AR20230007771

APPLICANT REQUESTS: reinstatement and payment of his Reenlistment Bonus (REB) in the amount of \$12,000.00 in the Army National Guard.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record)

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, his REB contract was terminated in error as he complied with his reenlistment contract signed on 29 February 2016. He should be paid the \$12,000.00 owed to him for his REB contract for his 2016 extension.
3. A review of the applicant's available service record reflects the following:
 - a. On 25 October 2007, he enlisted in the Puerto Rico Army National Guard (PRARNG). In conjunction with his enlistment, he signed National Guard Bureau (NGB) Form 600-7-1-R-E (Annex E to DD Form 4 Non-Prior Service Enlistment Bonus Addendum ARNG of the United States), entitling him to a \$20,000.00 bonus paid in a lump sum for enlistment into a critical unit identifier code, 755th Military Police Company, under Military Occupational Specialty (MOS) 31B (Military Police).
 - b. On 17 September 2008, he entered active duty for training.
 - c. On 19 February 2009, he was honorably released from active duty and returned to his ARNG unit after completion of basic training and MOS 31B training.
 - d. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 7 June 2013 shows he extended his enlistment with the PRARNG for a period of 3 years. In conjunction with this extension, he signed NGB Form 600-7-3-R-E (Annex R to

DD Form 4 or DA Form 4836 REB Addendum ARNG of the United States), entitling him to a \$5,000.00 bonus for extending his enlistment for 3 years in MOS 31B to be paid in lump sum. This form bears bonus control number R13060381XX.

e. DA Form 4836, dated 29 February 2016 shows he extended his enlistment with the PRARNG for a period of 6 years. In conjunction with this extension, he signed NGB Form 600-7-3-R-E entitling him to a \$12,000.00 REB in MOS 31B for extending his enlistment for 6 years to be paid in two increments (50 percent processed for payment the day after his current expiration term of service and 50 percent upon completion of the 4th year anniversary provided the first installment was previously processed). This form bears bonus control number R16020132XX.

f. DA Form 4836, dated 5 August 2022 shows he extended his enlistment with the PRARNG for a period of 6 years.

g. He continues service with the PRARNG.

4. On 30 January 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request stating, in effect:

a. The applicant was notified by the PRARNG Education and Incentives Branch that there was a discrepancy discovered with his bonus. He states that he extended his contract in 2016 and was entitled to a total bonus of \$12,000.00 but was never paid that bonus because of a termination error with his previous bonus contract. He requests that the ABCMR approve back pay of his 2016 REB.

b. His records show that he signed an incentive contract on 7 June 2013 for three years and a lump sum entitlement of \$5,000.00. On 24 September 2014, the Education and Incentive Branch from the PRARNG notified him of a discrepancy regarding a missing signature/date on the addendum. On 18 November 2014, the Education and Incentive Branch of the PRARNG notified him by mail of the incentive termination due to him not requesting an Exception to Policy (ETP) process in 45 days. On 29 February 2016, he signed a REB, committing to serve for six years. This incentive contract was for \$20,000.00. This incentive contract could not be established due to the prior contract still being active. Upon verification of the Incentive Contract R1306038X PR signed in 2013, history of action in the Guard Incentive Management System, and the NGB Form 600-7-3-R-E, we found that the addendum was indeed signed and dated 7 June 2013. This indicates that the ETP was not required, and therefore, the applicant is entitled to the incentive contract for \$5,000.00. Upon verification of the Incentive Contract R16020132XX signed in 2016, the contract was never established due to the active prior contract (R1306038X PR).

c. Based on the applicant's claims and his records, the applicant never received his

payment of his REB signed in 2016 because of an error in processing his prior incentive contract. For these reasons, it is the recommendation of this office that the applicant's request be approved. Due to an erroneous prior decision by the Education and Incentive Branch staff, the applicant could not receive the incentive payment of bonus R1306038X PR. Furthermore, the incorrect decision also affected the establishment of bonus R16020132XX and the future payment of this incentive. The applicant was never paid either of his incentive bonuses. It is recommended that the applicant receive his outstanding payment of his REB from his contract in 2013 and 2016.

d. The ARNG Incentives Branch did not provide input for this recommendation.

e. The PRARNG concurs with this recommendation.

5. On 31 January 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to respond. As of 14 February 2024, he did not respond.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The applicant extended his contract in 2016 for 6 years in exchange for a \$12,000 bonus, which was not paid because of a termination error with his previous bonus contract.

a. He had previously signed an incentive contract on 7 June 2013 for 3 years and a lump sum entitlement of \$5,000. On 24 September 2014, the State ARNG Education and Incentive Branch notified him of a discrepancy regarding a missing signature/date on the addendum and on 18 November 2014, they notified him of the incentive termination due to not requesting an Exception to Policy (ETP) process. On 29 February 2016, he signed a 6-year REB, for \$20,000.00. This incentive contract could not be established due to the prior contract still being active. However, since his previous incentive was in fact signed, the ETP was not required, and therefore, the applicant is entitled to the incentive contract for \$5,000.

b. Based on the applicant's claims and his records, the applicant never received his payment of his REB signed in 2016 because of an error in processing his prior incentive contract. The Board agreed with the NGB's finding that due to an erroneous prior decision by the Education and Incentive Branch staff, the applicant did not receive the incentive payment of both, his 2013 extension and 2016 extension. The Board agreed that he should receive his outstanding payment of his 2013 and 2016 incentives.

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

- showing the applicant timely submitted an exception to policy to the National Guard Bureau (NGB) for payment of his June 2013 3-year incentive of \$5,000
- showing the applicant timely submitted an exception to policy to the NGB for payment of his February 2016 6-year incentive of \$12,000
- showing the NGB timely received, processed, and approved both exceptions for payment, and paying him both incentives as a result of this correction

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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. 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. Title 37, USC, section 308 (Special Pay: reenlistment bonus) states the Secretary concerned may pay a bonus under paragraph (2) to a member of a uniformed service who is qualified in a military skill designated as critical by the Secretary of Defense, and reenlists or voluntarily extends the member's enlistment for a period of at least three years in a regular component or the Reserve component of the service concerned. Bonus payments authorized under this section may be paid in either a lump sum or in installments. If the bonus is paid in installments, the initial payment shall be not less than 50 percent of the total bonus amount.
3. National Guard Bureau Selected Reserve Incentive Program (SRIP) Policy Number 16-01 provides that the REB is processed in 2 installments: 50 percent on the contract start date provided the Soldier is assigned to the appropriate MOS and 50 percent on the 4-year anniversary of the contract start date provided the Soldier is assigned to the same MOS.
4. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

//NOTHING FOLLOWS//