

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230009407

APPLICANT REQUESTS: in effect,

- Exception to Policy (ETP) to be paid his 2011 Selected Reserve Incentive Program (SRIP) Reenlistment Bonus (REB) in the amount of \$3,000.00 (tax free)
- payment of his 2015 REB in the amount of \$10,000.00

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment)
- National Guard Bureau (NGB) Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 Reenlistment/Extension Decentralized State Incentive Pilot program Addendum Army National Guard of the United States (ARNGUS), 19 August 2011
- NGB Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 REB Addendum ARNGUS, 11 January 2015
- [REDACTED] Army National Guard ([REDACTED] ARNG) Memorandum, Subject: ETP Recommendation for Sergeant (SGT) [REDACTED] (the applicant)
- NGB Memorandum, Subject: Request for ETP for REB (SGT [REDACTED] (the applicant))

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 effect, he requests an ETP in order to be paid his SRIP REB in the amount of \$3,000.00 from his 2011 reenlistment which was to be tax free because he was serving in Iraq supporting Operation New Dawn. He also requests to be paid his REB from his 2015 reenlistment in the amount of \$10,000.00. Both of which were never paid due to no fault of his own. It is an injustice he has not been paid his REB as he honorably completed his contractual obligations.

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

a. On 28 April 2004, the applicant enlisted in the ARNGUS with entitlement to an enlistment bonus in the amount of \$3,000.00 in Military Occupational Specialty (MOS) 25C (Radio Operator /Maintainer).

b. The applicant's Enlisted Record Brief shows the applicant:

- served in Kuwait during the period of 20 September 2008 through 13 July 2009
- served in Iraq 2 February through 6 November 2011
- suspension of favorable personnel action effective 16 March 2014

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty for training on 9 November 2004. He was honorably released from active duty on 3 May 2005. DD Form 214 shows the applicant completed 5-months and 25-days of active service. Item 14 (Military Education) shows "Radio Operator/Maintainer Course, 12 weeks, May 2005."

d. On 8 August 2006, Orders Number 220-510, issued by the State of [REDACTED] Office of the Adjutant General, ordered the applicant to Active Duty for Special Work (ADSW) in support of border security and operations, effective 9 August 2006.

e. The applicant was honorably released from active duty on 3 September 2007. DD Form 214 shows the applicant completed 1-year and 25-days of active service in MOS 25U (Signal Support System Specialist).

f. On 5 June 2008, Orders Number 158-644, issued by the State of [REDACTED] Office of the Adjutant General, ordered the applicant to active duty in support of Operation Iraqi Freedom, effective 20 July 2008.

g. The applicant was honorably released from active duty on 2 August 2009. DD Form 214 shows the applicant completed 1-year and 13-days of active service in MOS 25U.

h. On 11 April 2010, the applicant extended his enlistment for 3-years in the ARNG.

i. On 2 November 2010, Orders Number 306-468, issued by the State of [REDACTED] Office of the Adjutant General, ordered the applicant to active duty in support of Operation New Dawn, effective 11 November 2010.

j. On 19 August 2011, the applicant extended his enlistment for 3-years in the ARNG. Bonus Control Number (BCN): R11080029XX. NGB Form 600-7-3-R-E version

29 March 2011 states in:

(1) Section II (Eligibility) the applicant was extending Duty (DMOS) qualified for 6-years in MOS 25U.

(2) Section III (Bonus Amount and Payments), the REB for non-mobilized or deployed (6-years): the applicant extended for 6-years to receive \$7,500.00. He certified he was extending in a valid vacant position of his MOS. The payment would be processed on the day after his current expiration of term of service and paid in a lump sum.

k. The applicant was honorably released from active duty on 23 January 2012. DD Form 214 shows the applicant completed 1-year, 2-months, and 13-days of active service.

l. On 11 January 2015, the applicant extended his enlistment in the ARNG for 6-years. BCN: R1501017XX. The NGB Form 600-7-3-R-E version 2 June 2014 states in:

(1) Section II (Eligibility), he must not currently be under an active suspension of favorable personnel actions flag. He was extending DMOSQ in MOS 25U for 6-years.

(2) Section III (Bonus Amount and Payments), he extended for 6-years DMOSQ REB for a total REB in the amount of \$10,000.00 to be processed in two installments. The first 50 percent REB payment would be processed the day after his current expiration of term of service upon verification of his MOS and assignment qualifications. The second 50 percent would be processed on the fourth year anniversary of his REB contract start date provided installment 1 was previously processed. He would not receive REB payment if he did not meet all REB eligibility requirements on the contract start date.

(3) Section IV (Suspension), he understood he would be suspended from REB eligibility if he received a suspension of favorable personnel action flag excluding Army Physical Fitness Test or failure to meet Army Body Composition Program standards which was initiated effective the contract start date. The REB payments would be suspended until such time as the suspension of favorably personnel action flag was removed favorably. Upon removal of the flag the incentive manager would process the REB payment.

m. Headquarters, [REDACTED] ARNG Memorandum, Subject: ABCMR requirement for the applicant, dated 30 March 2021, stated an audit of unpaid incentives indicated he might be entitled to a previously earned incentive payment. If he believed he was entitled to the incentive he may submit a packet to the Army Review Boards Agency. The incentive contract for BCN: R15010107XX. He had 90-days from the date of notification to

request potential overdue payments from the [REDACTED] Incentive Management Office. If no response was received in 90-days, the contract would be marked complete.

n. On 12 April 2021, the applicant extended his enlistment in the ARNG for 3-years.

o. On 14 January 2023, the applicant extended his enlistment in the ARNG for 4-months and 28-days.

p. On 6 August 2023, the applicant extended his enlistment in the ARNG for 2-years.

4. The applicant provides:

a. [REDACTED] ARNG Memorandum, Subject: ETP Recommendation for the applicant, dated 2 March 2015, which stated the [REDACTED] ARNG Soldier Incentives Assistance Center requested an ETP for the applicant regarding his SRIP REB. The applicant signed an addendum version 29 March 2011 with the bonus amount of \$7,500.00 which was obsolete at the time of his extension. He should have signed the version dated 1 August 2011 with the dollar amount of \$3,000.00. Due to extenuating circumstances which were no fault of the applicant, it is recommended the ETP be approved.

b. NGB Memorandum, Subject: Request ETP for REB for the applicant, dated 4 December 2015, which approved the ETP for the applicant to retain his \$3,000.00 REB due to the BCN information did not match the enlistment agreement and the addendum was obsolete which violated ARNG policy. The applicant accepted an incentive in good faith and had fulfilled the obligation under the contract at the time of the ETP request. Therefore, withholding the payment of the incentive would be against equity, good conscience and contrary to the best interest of the Army.

5. On 14 February 2024, in the processing of this case, the NGB provided an advisory opinion regarding the applicant's request for the payment of \$3,000.00 from his 2011 incentive bonus and the payment of \$10,000.00 from his 2015 extension incentive bonus. The advisory official recommended a partial relief of the applicant's request.

a. The applicant's initial extension which he signed on 19 August 2011 with the incentive of \$7,500.00 was erroneous. His oath of extension stated the applicant extended for 3-years and his Annex R To DD Form 4 or DA Form 4836 (Reenlistment/ Extension Decentralized State Incentive Pilot Program Addendum Army National Guard Of The United States) stated he extended for 6-years with a bonus in the amount of \$7,500.00. However, the ARNG SRIP for Fiscal Year 2011 stated that Soldier's extending for 3-years would only receive a \$3,000.00 lump-sum incentive bonus. Also, the incentive officer used an obsolete form which made the contract agreement invalid. An ETP was approved which guaranteed the applicant a \$3,000.00 bonus.

b. On 11 January 2015, the applicant again extended his enlistment for 6-years and the payments would be made in two installments. The first 50 percent would be processed the day after his current expiration of term of service upon the verification of his MOS and assignment qualification. The additional 50 percent would be processed on the fourth-year anniversary of his contract start date. An initial review of the applicant's documents revealed there were no issues regarding the applicant's non-payment of the second extension bonus, besides the fact the first extension was still open and therefore action could not be taken on the second extension until the first bonus was resolved. Further review of the applicant's records revealed the applicant was flagged for adverse action which was closed unfavorably. Therefore, he should not have been eligible to extend; however, the [REDACTED] ARNG did extend him, and he completed the contract agreement. The suspension clause in the extension contract stated if a Soldier received a suspension of favorable personnel action the bonus contract will be suspended until the removal of the suspension of favorable action. Upon removal of the suspension of favorable personnel action, the state incentive manager will process the payment accordingly.

c. It is recommended the applicant's incentive bonus in the amount of \$3,000.00 for his extension contract be paid per the approved ETP by the Army NGB which was dated 4 December 2015. A partial payment of the applicant's 2015 incentive bonus in the amount of \$5,000.00 is also supported. The flagging action was completed on 30 November 2015 with an effective date of 16 March 2014, which is how the system allowed him to be extended and why the bonus addendum was able to be generated. The second payment should not be paid as he was flagged and not eligible for payment.

6. On 22 February 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and command. He did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found partial relief is warranted.

2. The Board concurred with the conclusion of the advisory official that the evidence supports partial relief for the reasons provided in the advisory memorandum. The Board determined the applicant should be paid the \$3,000 bonus related to his enlistment extension in 2011 and the initial \$5,000 payment of the incentive he contracted for in 2015.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : 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 and Army National Guard records of the individual concerned be corrected to show approval of payment of the \$3,000 bonus related to his enlistment extension in 2011 and the initial \$5,000 installment of the incentive he contracted for in 2015.

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 any relief in excess of that described above.

9/16/2024

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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. Army National Guard (ARNG) SRIP for Fiscal Year 2011 dated 25 July 2011 in effect at the time, applies to those entering or serving in a traditional status in the ARNG effective 1 August 2011. The recipient, enlisting/ witnessing official, and service representative are required to sign an incentive addendum on the date of reenlistment or extension unless otherwise stated in this policy. The incentive addendum will state the terms and conditions of the incentive. Otherwise, the incentive addendum is not valid. Paragraph 12 (REB), for a 3-year or 6-year term of service, the REB Non-Mobilized - 6 years: (\$10,000.00) 50/50 payment. Installment 1: (\$5,000.00) to be processed on the new contract start date for DMOSQ. Processed upon completion of qualification training and verification in SIDPERS for Non-DMOSQ. Installment 2: (\$5,000.00) to be processed on the 3-year anniversary of the contract start date. The Chief, Education, Incentives, and Employment Division is the proponent for this policy and is the authority for ETP determinations. All ETPs will be initiated by the Soldiers and routed through their chain of command to the State IM and State Military Personnel Officer, to the Incentive Operation Team for action. Approved or denied ETPs and supporting documents must be uploaded in GCRc and/or iPERMS.

3. Title 37 USC, section 308 (Special pay: reenlistment bonus), the Secretary concerned may pay a bonus under paragraph (2) to a member of a uniformed service reenlists or voluntarily extends the member's enlistment for a period of at least three years in a reserve component of the service concerned, if the member is performing active Guard and Reserve duty. 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.

4. Department of Instruction 1205.21 (Reserve Component Incentive Programs Procedures), Incentive skills shall be used to attract and retain individuals possessing or qualifying for training in critical skills and/or critical units needed in wartime and to sustain membership and maintain readiness in the National Guard and Reserve components. As a condition of the receipt of an incentive covered by this Instruction, each recipient shall be required to sign a written agreement stating that the member has been advised of and understands the conditions under which continued entitlement to unpaid incentive amounts shall be terminated and which advance payments may be recouped. That agreement shall clearly specify the terms of the Reserve service commitment that authorizes the payment of the incentive to the member.

5. 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//