

IN THE CASE OF: ██████████

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230010780

APPLICANT REQUESTS: reinstatement and payment of his Enlisted Affiliation Bonus (EAB) with the ██████████ Army National Guard (██████ ARNG) 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)
- Orders Number 341-1009, 7 December 2015
- National Guard Bureau (NGB) Form 600-7-4-R-E (Annex B to DD Form 4 EAB Army National Guard of the United States (ARNG), 14 December 2015
- Orders Number 350-1010, 16 December 2015
- Orders Number 132-1027, 11 May 2016
- Orders Number 175-1088, 23 June 2016
- Orders Number 194-1026, 12 July 2016
- Orders Number 189-1040, 8 July 2017
- Orders Number 58-1073, 27 February 2018
- Orders Number 184-1028, 3 July 2019
- Orders Number 0001001205.00 (Permanent Change of Assignment Orders), 18 February 2021
- Orders Number 0001809408.00 (Voluntary Separation Orders), 5 May 2022

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, payment of his EAB was not received due to unjust and involuntary assignment and reassignment twice within the first 90 days of his original reporting date to the ████████ ARNG with the Unit Identification Code (UIC) WTSPAX as listed in his bonus addendum. He was transferred through no fault of his own and should not be penalized for it.

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

- a. On 28 February 2007, the applicant enlisted in the Regular Army in Military Occupational Specialty (MOS) 31B (Military Policeman).
- b. On 7 December 2015, the U.S. Army Installation Management Command, Headquarters, United States Army Garrison, Fort Drum issued Orders Number 341-1009 reassigning him to the U.S. Army transition point for transition processing and discharge from the Regular Army.
- c. On 14 December 2015, he enlisted in the [REDACTED] ARNG. In conjunction he signed NGB Form 600-7-4-R-E entitling him to a \$10,000.00 EAB for a 6-year term of affiliation under UIC WTSPAX and MOS 31B. He agreed to serve in the same UIC for the entire 6 years. Section III (Bonus Amounts and Payments) shows he would receive the first 50 percent within 180 days after his affiliation into the ARMG, reporting to his unit of assignment and verification of his critical EAB UIC/MOS. The second 50 percent would be processed within 180 days after his fourth year anniversary provided the first installment was processed. Section VI (Termination) states, in effect, "I may be terminated from EAB with recoupment for any of the following reasons:" m(2) "I voluntarily transfer out of my current EAB UIC and/or MOS into a different UIC and/or MOS. The effective date of termination is the date of my transfer order."
- d. On 16 December 2015, the U.S. Army Installation Management Command, Headquarters, United States Army Garrison, Fort Drum issued Orders Number 350-1010 amending Orders Number 341-1009 assigning him to Detachment 1, 649th Military Police (MP) Company (UIC) WTSPAX.
- e. On 25 April 2016, he was honorably released from active duty by reason of completion of required active service and assigned to his ARNG unit.
- f. On 11 May 2016, the Joint Force Headquarters, [REDACTED] ARNG issued Orders Number 132-1027 awarding him MOS 31B with a retroactive effective date of 25 April 2016.
- g. On 23 June 2016, the Joint Force Headquarters, [REDACTED] ARNG issued Orders Number 175-1088 releasing him from Detachment 1, 649th MP Company (UIC) WTSPAX and assigning him to the 270th MP Company (UIC) WQUUA, effective 23 June 2016.
- h. On 12 July 2016, the Joint Force Headquarters, [REDACTED] ARNG issued Orders Number 194-1026 releasing him from 270th MP Company (UIC) WQUUAX and assigning him to Detachment 1, 649th MP Company (UIC) WTSPAX with a retroactive effective date of 11 July 2016.
- i. On 8 July 2017, the Joint Force Headquarters, [REDACTED] ARNG issued Orders

Number 189-1040 releasing him from Detachment 1, 649th MP Company (UIC) WTSPAX and assigning him to Detachment 1, 270th MP Company (UIC) WQUUAX with a retroactive effective date of 6 July 2017.

j. On 27 February 2018, the Joint Force Headquarters, ■■■ ARNG issued Orders Number 58-1073 releasing him from Detachment 1, 270th MP Company (UIC) WQUUAX and assigning him to the 270th MP Company (UIC) WQUUAA with a retroactive effective date of 22 February 2018.

i. On 3 July 2019, the Joint Force Headquarters, ■■■ ARNG issued Orders Number 184-1028 releasing him from 270th Military Police Company (UIC) WQUUAX and assigning him to Detachment 1, 270th Military Police Company (UIC) WQUUA1.

j. On 18 February 2021, the ■■■ ARNG, Army Element Joint Force Headquarters issued Orders Number 0001001205.00 ordering him to a permanent change of assignment and assigning him to Detachment 1, 270th MP (UIC) WQUUA1 with a retroactive effective date of 14 October 2020.

k. On 5 May 2022, the ■■■ ARNG, Army Element Joint Force Headquarters issued Orders Number 0001809408.00 honorably separating him from the ■■■ ARNG with a retroactive effective date of 25 April 2022.

4. On 30 January 2024, in the processing of this case, the NGB, Chief, Special Actions Branch, in conjunction with the ■■■ ARNG, Chief, Personnel Services Branch provided an advisory opinion recommending approval of the applicant's request stating, in effect:

a. The applicant reenlisted as a 31B for a six-year contract on 14 December 2015 and signed a bonus addendum for \$10,000.00 less taxes. He was to receive the bonus in two payments each of \$5,000.00 less taxes. He states he did not receive any payments because he was involuntarily reassigned twice within the first 90 days of his contract within the same UIC. He was then reassigned three more times to different UICs within his six-year contract. He states that this was involuntary, and he is still eligible to receive his bonus.

b. In review of his NGB Form 600-7-R-E, six-year MOS Qualified EAB addendum, signed on 14 December 2015 he is entitled to receive \$10,000.00. The applicant's Guard Incentive Management System assignment history shows he was assigned to seven different positions in three different UICs during his six-year enlistment contract. These reassignments would not make him ineligible to receive his EAB because in accordance with National Guard Regulation (NGR) 600-7 (Selected Reserve Incentive Program (SRIP), paragraph 1-19.b, he was only assigned to incentive eligible UICs and never assigned to excess positions. His reassignments were of no fault of his own and he remained MOS qualified for all assignments.

c. No other violations were found in his records that would make him ineligible to receive his bonus.

d. It is the recommendation of this office that the applicant's request be approved, and applicant to be paid the \$10,000.00 less taxes he contracted for in 2015. He completed all requirements of the bonus addendum and is owed \$10,000.00 less taxes.

e. The [REDACTED] ARNG concurs with this advisory opinion and states the applicant is eligible and due the funds contracted for in 2015.

5. On 31 January 2024, the applicant was provided with a copy of the advisory opinion to provide a response.

6. On 13 February 2024, he responded to the advisory opinion concurring with the recommendation.

#### 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 National Guard Bureau (NGB), Chief, Special Actions Branch, in conjunction with the [REDACTED] ARNG, Chief, Personnel Services Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding the applicant should have receive his bonus in two payments each of \$5,000.00 less taxes. However, evidence shows the applicant did not receive any payments because he was involuntarily reassigned twice within the first 90 days of his contract within the same UIC.

2. The Board agreed at no fault of the applicant, he is eligible and due the funds contracted for in 2015. The Board determined the applicant is entitled to be paid the \$10,000.00 less taxes he contracted for in 2015. As such, the Board granted relief for reinstatement and payment of the applicant's Enlisted Affiliation Bonus (EAB) with the [REDACTED] Army National Guard ([REDACTED] ARNG) in the amount of \$10,000.00.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

█	█	█	GRANT FULL RELIEF
:	:	:	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 records of the individual concerned be corrected to reinstatement and payment of his Enlisted Affiliation Bonus (EAB) with the █ Army National Guard (█ ARNG) in the amount of \$10,000.00.

4/11/2024

X

█

CHAIRPERSON

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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. NGR 600-7 (Selected Reserve Incentive Program), Section III (Enlisted Affiliation Bonus (EAB)), paragraph 2-11 states the Applicant must:

a. Contract for no less than a three-year term of service for approved incentive entitlement by the Director, Army National Guard (DARNG) as outlined in the current fiscal year (FY) Selected Reserve Incentive Program (SRIP) policy.

b. Have completed fewer than 20 years of total military service upon execution of the written contract and received an honorable discharge at the conclusion of all prior periods of service or as outlined in the current FY SRIP policy.

c. Be projected to occupy or is occupying, a position as a member of the Selected Reserve (SELRES) in a specialty in which the person -

(1) Successfully served while a member on active duty and attained a level of qualification while on active duty commensurate with the grade and years of service of the member.

(2) Completes training or retraining in the specialty skill that is designated as critically short and attained a level of qualification in the specialty skill that is commensurate with the Soldier's grade and years of service if affiliating Non-DMOSQ.

d. Fill a valid vacant position and not an excess, over-strength, or manually-loaded vacancy.

e. Not enlisting to qualify for a military technician (includes temporary and indefinite technician positions unless the temporary position is for 179 days or less) or Active Guard/Reserve (AGR) position Title 10 or Title 32.

f. Execute a written agreement to serve as an enlisted member in the SELRES.

3. Title 31, U.S. Code, 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//