

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 July 2024

DOCKET NUMBER: AR20230012776

APPLICANT REQUESTS: remission or cancellation of indebtedness in the amount of \$3,388.89. 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)
- Personal Letter
- Orders Number 070-1032, dated 11 March 2013
- National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service), 21 March 2013
- Defense Finance and Accounting Service (DFAS) Letter, 16 August 2023
- DFAS Letter, 24 October 2023

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 received a letter of indebtedness from DFAS Defense Legal Services Agency notifying him that DFAS had filed a claim for recoupment of his bonus. However, Orders Number 070-1032 and NGB Form 22 state that there is no recoupment of his bonus. Therefore, the debt is invalid and all monies he has paid should be returned to him and his record cleared.

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

a. On 14 July 2009, he enlisted in [REDACTED] Army National Guard ([REDACTED] ARNG) for a period of 6 years. In conjunction with this enlistment, he signed NGB Form 600-7-1-R-E (Annex E to DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) Non-Prior Service Enlistment Bonus (NPSEB) Addendum ARNG), showing the applicant's entitlement to a \$10,000.00 NPSEB incentive for enlisting for 6-years in the critical skill Military Occupational Specialty (MOS) 88M (Motor Transport

Operator), and being Duty MOS Qualified to be paid in three installments (50 percent processed upon award of the contracted MOS, 20 percent upon completion of the 3rd year anniversary of the enlistment date, and the final 30 percent upon completion of the 6th year anniversary of the enlistment date). This form bears Bonus Control Number [REDACTED].

b. On 4 November 2009, he entered initial active duty for training.

c. On 2 April 2010, he was honorably released from initial active duty for training and returned to his ARNG unit after being awarded MOS 88M.

d. On 11 March 2013, the Joint Force Headquarters [REDACTED] ARNG issued Orders Number 070-1032 for an honorable discharge from the ARNG. His incentive bonus section shows - Select Reserve Incentive Program (SRIP): Yes; Termination: Yes; Recoupment: No; Termination Date 21 March 2013.

e. NGB Form 22, dated 21 March 2013 shows an honorable discharge from the [REDACTED] ARNG due to being medically unfit for retention under the provisions of Army Regulation (AR) 40-501 (Standards of Medical Fitness), with service from 14 July 2009 to 21 March 2013 for a net service this period of 3 years, 8 months, and 8 days. Item 18 (Remarks) shows enlistment bonus 21 March 2013; terminated due to discharge without recoupment.

f. On 13 February 2024, the assigned Analyst with the Army Review Boards Agency received email correspondence from the DFAS, Supervisor, Correction of Records/Claims Debt and Claims Management stating, in effect, the applicant did have a debt in the Out of Service debt system. However, currently it shows a balance due of \$0 with the remainder of the debt written off. According to their system, the debts were recoupment due to loss or damage to government property or equipment. Government Property Loss or Damage (GPLD) Number [REDACTED] dated 24 May 2013. Recoupment of the unearned portion of his Reserve or National Guard Bonus-his unit reported he satisfactorily performed 26 months of his contract. His record shows part of the debt was paid, and the remainder of the debt was written off.

4. The applicant provides the following:

a. DFAS Letter, dated 16 August 2023 wherein the Defense Office of Hearing and Appeals (DOHA), Claims Adjudicator stated, in pertinent part, they have suspended adjudication of the claim against him without action. After careful review of the file, the documentation in the file (NGB Form 22 and Orders Number 070-1032), indicates that the bonus was not subject to recoupment. Therefore, it is not apparent to their office that the debt is valid.

b. DFAS Letter, dated 24 October 2023, wherein the Division Chief, Waivers Branch Debt and Claims Management stated, in effect:

(1) They are unable to process the applicant's request for waiver of indebtedness resulting from recoupment of the unearned portion of the Selective Reenlistment Bonus (SRB). Review of his account shows he was notified by DFAS Debt and Claims Branch of a \$3,388.89 indebtedness. He was notified in a letter, dated 23 December 2014, that he served 26 months of his 72-month SRB contract. SRB recoupment was in the amount of \$3,388.89.

(2) On 16 August 2023, DOHA had suspended adjudication of the claim after review of the NGB Form 22 and Orders Number 070-1032 indicated that the SRB in question was not subject to recoupment. DOHA stated that it is not apparent to their office that the debt is valid. Waiver requests can only be processed for a valid debt.

(3) They are closing the case file until, such time as, they receive the notification that the debt is valid. This action does not eliminate possible relief. A correction of his military records may eliminate his need for a waiver or lessen the amount for waiver consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the information reflected in the applicant's orders and NGB Form 22, as well as the findings outlined in 16 August 2023 DOHA correspondence that the subject SRB was not subject to recoupment, the Board concluded the recoupment of the SRB was ambiguous in nature. Therefore, recouping the SRB creates an injustice warranting correction to the applicant's record by reimbursing any and all monies previously collected from the applicant as a part of the applicant's SRB.

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 and Army National Guard records of the individual concerned be corrected by showing collection of any debt related to termination of his enlistment bonus was cancelled. As a result of this correction, any monies paid toward that debt should be returned to him.

1/7/2025

X [REDACTED]

CHAIRPERSON
[REDACTED]

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. 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. 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//