

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: ██████████

BOARD DATE: 11 May 2024

DOCKET NUMBER: AR20230013038

APPLICANT REQUESTS: in effect, remission/cancellation of his indebtedness for his Reenlistment Bonus (REB) in the Army National Guard.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Form 600-7-3-R-E (Annex to R to DD Form 4 or DA Form 4836 REB Addendum Army National Guard (ARNG) of the United States), 2 August 2015
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 29 March 2018
- DA Form 705 (Army Physical Fitness Test (APFT) Scorecard)
- NGB Form 22 (Report of Separation and Record of Service), ending on 4 April 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 effect, he was recently made aware he had to repay his REB for not meeting the contractual requirements from 6-years ago. His unit failed to inform him that he failed to meet the requirement to receive his REB for failing his APFT for the second time. Had he known of his contractual requirement; he would not have taken the REB. Now, after years of service of which he is no longer serving, he is being asked to repay the money that he does not have. He is struggling to repay his student loans, mortgage, and family bills, as well as assist his son with his college tuition. He recently had to pay for military equipment that was issued to him nine-years ago while he was in basic training. He asks the Board to understand his situation and dismiss the recoupment of the REB.

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

a. On 5 April 2013, the applicant enlisted in the ARNG.

b. He entered active duty for training on 12 November 2013 and completed training for award of military occupational specialty (MOS) 11B (Infantryman). On 11 April 2014, the applicant was honorably released from active duty.

c. On 2 August 2015, the applicant extended in the ARNG for 2-years for a new Expiration Term of Service (ETS) of 4 April 2018. In conjunction with this extension NGB Form 600-7-3-R-E shows he extended in MOS 11B for 2-years. It states in:

(1) Section III (Bonus Amount and Payments) he reenlisted or extended for the 2-year duty MOS qualified REB and would receive a lump sum payment in the amount of \$4,000.00. The REB would be processed effective the day after his current ETS. He would not receive the REB payment if he did not meet all REB eligibility requirements on the contract start date, the day after his ETS.

(2) Section IV (Suspension) if he received a suspension of favorable personnel action, excluding APFT or Army Body Composition Program (ABCP) standards which was initiated effective the contract start date. The REB payments would be suspended until the suspension of favorable personnel action was removed favorably.

(3) Section V (Continued Receipt) he would be eligible for continued receipt of his REB during the period of any suspension of favorable personnel action for non-consecutive record APFT or ABCP failure.

(4) Section VI (Termination) may be terminated from REB eligibility with recoupment for two consecutive record APFT failures within this REB contract term. The effective date of the termination is the date of the second consecutive record APFT failure. The recoupment would be based on the amount of the REB divided by the total number of months contracted multiplied by the dollar amount by the total number of months served prior to the termination. Subtract the amount earned from the amount already paid to determine the recoupment amount.

d. On 1 October 2016, the applicant failed his record APFT when he failed to obtain the minimum number of sit-ups required for his gender and age group with raw score of 40 for 58 points.

e. On 12 February 2017, the applicant failed his second consecutive APFT when he failed to obtain the minimum 2-mile run time required for his gender and age group with a raw score of 18:11 for 55 points. This was 134-days after the first APFT failure.

f. On 4 November 2017, the applicant passed his record APFT when he obtained the minimum score in all three events. The was 265-days after his last record APFT.

g. On 29 March 2018, the applicant extended his enlistment in the ARNG for 2-years for a new ETS date of 4 April 2020. In conjunction with this extension NGB Form 600-7-4-R-E (Annex to R to DD Form 4 or DA Form 4836 REB Addendum ARNG of the United States) shows he reenlisted or extended in MOS 11B for 2-years. It states in:

(1) Section III (Bonus Amount and Payments) reenlisted or extended for the 2-year duty MOS qualified REB and would receive a lump sum payment in the amount of \$4,000.00. The REB would be processed effective the day after his current ETS. He would not receive the REB payment if he did not meet all REB eligibility requirements on the contract start date, the day after his ETS.

(2) Section IV (Suspension) if he received a suspension of favorable personnel action, excluding APFT or ABCP standards which was initiated effective the contract start date. The REB payments would be suspended until the suspension of favorable personnel action was removed favorably.

(3) Section V (Continued Receipt) he would be eligible for continued receipt of his REB during the period of any suspension of favorable personnel action for non-consecutive record APFT or ABCP failure.

(4) Section VI (Termination) may be terminated from REB eligibility with recoupment for two consecutive record APFT failures within this REB contract term. The effective date of the termination is the date of the second consecutive record APFT failure. The recoupment would be based on the amount of the REB divided by the total number of months contracted multiplied by the dollar amount by the total number of months served prior to the termination. Subtract the amount earned from the amount already paid to determine the recoupment amount.

h. On 27 May 2018, the applicant failed his record APFT when he failed to obtain the minimum 2-mile run time with a raw score of 19:00 for 48 points and minimum sit-ups with a raw score of 33 for 49 points required for his gender and age group. This was 204-days after his last record APFT.

i. On 1 April 2020, the applicant extended his enlistment in the ARNG for 1-year for a new ETS date of 4 April 2021.

j. On 17 April 2020, Orders Number 108-100, issued by HQs, Rhode Island National Guard (RIARNG), the applicant was ordered to Full Time National Guard Duty for Operational Support, effective 15 April 2020.

k. On 21 July 2020, the applicant failed his record APFT when he failed to obtain the minimum 2-mile run time with a raw score of 20:07 for 44 points for his gender and age group. This was 786-days after his last record APFT.

l. On 12 March 2021, the applicant extended his enlistment in the ARNG for 1-year for a new ETS date of 4 April 2022.

m. On 4 April 2022, the applicant was honorably discharged from the ARNG. NGB Form 22 shows the applicant completed 9-years of service.

4. On 29 November 2023, in the processing of this case, the Defense Finance and Accounting Service stated via e-mail the applicant has out of service debts for:

- Servicemember Group Life Insurance in the amount of \$60.60
- Social Security tax for the period of September through December 2020 deferred collection in the amount of \$105.15
- lost or damaged government equipment in the amount of \$413.74
- unearned portion of NG bonus in the amount of \$2,333.33

The applicant paid \$655.30 and still owes \$2,285.44. There were no documents available regarding the debt since the debts were interfaced.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence shows the applicant extended his ARNG enlistment on 29 March 2018. In connection with this extension, he signed Annex R (REB Addendum) which promised him a lump sum payment in the amount of \$4,000.00. The REB would be processed effective the day after his current ETS. His contract stipulated that he would not receive the REB payment if he did not meet all REB eligibility requirements on the contract start date, the day after his ETS, and he may be terminated from REB eligibility with recoupment for two consecutive record APFT failures within this REB contract term. The effective date of the termination is the date of the second consecutive record APFT failure. The evidence shows he failed a record APFT on 27 May 2018 and on 21 July 2020. He was honorably discharged from the ARNG on 4 April 2022. DFAS verified that his debt consists of, in part, the amount of \$2,285.44 for the unearned portion of ARNG bonus. The Board was not persuaded by his contention that his unit failed to inform him that he failed to meet the requirement to receive his REB for failing his APFT for the second time. His contractual agreement clearly stipulated the condition for suspension and termination. The Board found no error or injustice.

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:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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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. National Guard Regulation (NGR) 600-7 (Selective Reserve Incentive Programs), prescribes policies and procedures for the administration of the ARNGUS incentive programs.

a. Paragraph 1-22 (Suspension of Incentives), b. a Soldier who has a suspension of favorable personnel action (flag) initiated will not be processed for an initial or anniversary payment. Incentive payment(s) will be processed effective on the date the suspension is lifted, provided the Soldier is eligible. Payment date(s) of original entitlement date will not be updated to date of flag removal. This excludes flags for the APFT failure or failure to meet body fat standards.

b. Paragraph 1-24 (Termination of incentives), A Soldier's incentive eligibility and entitlement stop when any of the termination reasons listed within the applicable chapters of this regulation apply. Although the Soldier's entitlement to the incentive is terminated, the Soldier's responsibility to serve the current statutory or contractual obligation remains. Once a Soldier has been terminated, reinstatement of eligibility is not authorized. The unit commander or an authorized unit representative will initiate termination procedures when a Soldier is terminated from an incentive. Termination with recoupment is defined as termination of the incentive with Soldier is entitled to a prorated incentive amount based on the number of months served satisfactorily prior to the incentive termination date. The Soldier may be required to pay funds back to the government or the Soldier may be entitled to a payment.

c. Paragraph 2-14 (Entitlement), Entitlement to an REB for an immediate reenlistment or extension begins on the date after ETS. The unit commander must ensure that Soldiers are counseled when they reenlist or extend that they will not receive payments immediately under this program.

d. Paragraph 5-4 (Termination of an incentive contract), Termination with or without recoupment - Additional payments scheduled. The following actions are required for all incentive terminations with or without recoupment that would otherwise result in recoupment of monies paid or forfeiture of further incentive payments. The State will notify the Soldier and the Soldier's current unit of assignment of the issue requiring incentive termination and the ETP option.

3. Army Regulation (AR) 350-1 (Army Training and Leader Development), prescribes policies, procedures, and responsibilities for developing, managing, and conducting Army training and leader development. Appendix F-5 (Physical readiness training program), k. Soldiers must take a record APFT every 6-months for RA and AGR Soldiers, and annually for all other USAR and ARNG Soldiers. If a Soldier fails a record APFT, commanders may allow Soldiers to retake the test as soon as the Soldier and commander feel the Soldier is ready to test (not to exceed 90-days). A repetitive APFT failure occurs when a Soldier fails a record test, is provided adequate time and assistance to condition (not to exceed 90-days) and fails again. Commanders may administer the APFT as often as they wish; however, they must specify beforehand when the APFT is for record. RA and AGR Soldiers will take a record APFT twice each calendar year, all other USAR and ARNG Soldiers will take a record APFT annually. A

minimum of 4-months will separate record tests for RA and AGR. The 4-month rule does not apply to Soldiers that must make-up a record test or re-testing for an APFT failure. A minimum of 8-months will separate record tests with no more than 14-months between record tests for other RC Soldiers (less IRR). The 8-month rule does not apply to Soldiers that require makeup testing or re-testing for an APFT failure.

4. HQDA EXORD 164-20 Army Physical Fitness Test (APFT) and Army Combat Fitness Test (ACFT) During the Coronavirus (COVID-19) Outbreak dated 27 April 2020, effective immediately, adjustments to the training and conduct of the APFT, ACFT and Army Body Composition Program assessment screening and tape-testing are implemented to better support COVID-19 mitigation measures, while still ensuring the physical readiness of our Soldiers. The APFT testing frequency standards for all components is temporarily suspended until further notice.

5. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//