

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 July 2024

DOCKET NUMBER: AR20230013104

APPLICANT REQUESTS: Reversal of the National Guard Bureau (NGB) Exception to Policy (ETP) denial to be paid the remainder of his Prior Service Enlistment Bonus (PSEB) in the amount of \$7,500.00.

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

- DD Form 149 (Application for Correction of Military Record)
- Personnel Qualification Record (PQR) – Enlisted
- NGB Memorandum, Subject: Change to Active Guard/Reserve (AGR) and Military Technician Termination and Recoupment Rules

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 enlisted in the Army National Guard (ARNG) to receive a \$15,000.00 PSEB. He received the first installment in 2009 when he became Military Occupational Specialty (MOS) qualified. He was to receive the second installment at 36-months from his enlistment date. In December 2009, he contacted Master Sergeant (MSG) [REDACTED] National Guard ([REDACTED] ARNG) Incentive Manager, who notified him his PSEB was terminated because he entered the AGR program, and he transferred to another state of the ARNG. He should be paid the unpaid portion of his PSEB in accordance with the NGB memorandum, Subject: Change to AGR and Military Technician Termination and Recoupment Rules. That in effect, states Soldiers who were under contract for an incentive and accepts a AGR position in the ARNG would have their incentive terminate without recoupment and any unpaid portion of the incentive would be paid. He contends the unpaid portion of his PSEB had not been paid. In November 2015, the NGB disapproved his ETP to retain his PSEB for the following reasons:

- written agreement was not located in the service records

- bonus control number was requested after the date of his enlistment
- was not duty MOS qualified for the contracted incentive
- became AGR within 180-days after the contract state date

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

- a. On 28 February 1994, the applicant enlisted in the ARNG.
- b. The applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant was ordered to active duty for training on 6 October 1994. He was honorably released from active duty on 3 February 1995 and was awarded MOS 11C (Indirect Fire Infantryman) after the completion of 3-months and 28-days of active service.
- c. On 18 December 1997, the applicant was honorably released from the ARNG and assigned to the U.S. Army Reserve (USAR) Control Group (Reinforcement). National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant completed 3-years, 9-months, and 21-days of service and held MOS 11C.
- d. On 1 April 1998, Orders Number 57-42, issued by Headquarters (HQs), PR State Area Command ARNG, the applicant was honorably assigned to the USAR Control Group (Reinforcement), effective 18 December 1997.
- e. On 5 March 2002, Orders Number D-03-210-261, issued by the USAR Personnel Command, the applicant was honorably discharged from the USAR, effective 5 March 2002.
- f. On 18 October 2006, the [REDACTED] ARNG authorized the applicant to be enlisted in the ARNG for a unit vacancy in HQs and HQs Company, 192nd Support Battalion in MOS 92A (Automated Logistical Specialist) equipment receiving parts specialist.
- g. On 25 October 2006, the applicant enlisted in the ARNG for 6-years. His service record is void of any evidence he enlisted for any incentive.
- h. On 14 August 2008, Orders Number 227-525 issued by the [REDACTED] ARNG Element Joint Forces HQs, the applicant was awarded MOS of 92Y, effective 25 July 2008.
- i. On 5 September 2008, DA Form 4187 (Personnel Action) shows the applicant was assigned and qualified in the 92Y duty position.
- j. On 24 August 2009, Orders Number 236-010, issued by the Joint Forces HQs – [REDACTED] the applicant was ordered to Full-Time NG duty in an AGR status, effective

1 September 2009. The orders also shows his duty MOS was 31B (Military Police) and his primary MOS was 92Y.

k. On 1 September 2009, the applicant voluntarily transferred to the State of ■■■ ARNG with a membership in the ARNG of the United States, effective 1 September 2009.

l. On 14 October 2009, Orders Number 287-575, issued by the ■■■ ARNG Element Joint Forces HQs, the applicant was released from the ■■■ ARNG and assigned to the ■■■ ARNG, effective 31 August 2009

m. On 25 October 2009, the applicant would have obtained 36-months of contractual service.

n. On 20 August 2010, Orders Number 232-010 issued by the ■■■ ARNG Element Joint Forces HQs, the applicant was awarded primary MOS 31B, secondary MOS 92Y, and additional MOS 11C, effective 7 August 2010.

o. On 6 February 2012, the applicant extended his enlistment in the ARNG for 6-years.

p. On 6 August 2013, Orders Number 218-107, issued by the State of ■■■ Department of Military and Veterans Affairs, the applicant was ordered to active duty in an AGR status, effective 1 September 2013.

q. The applicant's NGB Form 22 shows he was honorably retired from the ARNG on 4 June 1015 and assigned to the USAR Control Group (Retired Reserve) and assigned to the permanent disability retired list. It also shows he completed 5-years, 9-months, and 4-adys of service.

r. On 16 June 2015, Orders Number 167-001, issued by the ■■■ ARNG Element, Joint Forces HQs, the applicant was assigned to the USAR Control Group (Retired Reserve), effective 4 June 2015.

s. The applicant was honorably retired on 31 July 2015. DD Form 214 shows the applicant completed 5-years and 11-days active service.

t. On 12 November 2015, the NGB disapproved the applicant's ETP request to retain his PSEB in the amount of \$15,000.00 due to:

- written contract was not in the applicant's service record
- bonus control number was requested after the date of his enlistment
- was not duty MOS qualified for the contracted incentive

- entered the AGR program 180-days after his contract start date

The applicant contracted for MOS 92A and held primary MOS 31B at the time of disapproval.

4. The applicant provides:

a. PQR - Enlisted dated 26 June 2009 which shows the applicant was qualified for a bonus with the effective date of 25 October 2006. It also shows the applicant's primary MOS was 92Y and secondary MOS was 11C.

b. NGB Memorandum, Subject: Change to AGR and Military Technician Termination and Recoupment Rules, dated 29 October 2008, that in effect, states Soldiers who were under contract for an incentive and accepts a AGR position in the ARNG would have their incentive terminated without recoupment and any unpaid portion of the incentive would be paid. Any Soldier who had their incentive terminated, as a result of accepting an AGR position, between 9 October 2008 and the date of the memorandum (29 October 2008) may seek relief from that termination action.

5. On 8 May 2024, in the processing of this case, the NGB, provided an advisory opinion regarding the applicant's request to receive his second installment of his PSEB in the amount of \$7,500.00. The advisory official recommended the denial of the applicant's request. The applicant enlisted in the ARNG on 25 October 2006 for a 6-year obligation and he claimed he signed for a \$15,000.00 PSEB to be paid in two installments. He claims he received the first installment but not the second installment. He filed an ETP for the second payment which was denied by the NGB because the written incentive contract was not in his records, the bonus control number was requested after the date of his enlistment, and he entered the AGR program within 180-days of his contract start date. He also completed an interstate transfer from the [REDACTED] ARNG to the [REDACTED] ARNG, effective 1 September 2009.

The applicant does not have the bonus addendum and it was not filed in his records though the [REDACTED] ARNG entered the contract in Guard Incentive Management System (GIMS) on 16 November 2006, 22-days after the contract was signed due to no fault of the Soldier. Based on the GIMS profile the applicant contracted for the 92A MOS and did not become MOS qualified nor filled a 92A position. He became MOS qualified for 92Y on 14 August 2008.

The applicant did receive a \$7,500.00 payment on 10 August 2008. He transferred to the [REDACTED] ARNG and began his AGR orders on 1 September 2009 as a 31B prior to his eligibility for the second payment. The applicant provided the NGB memorandum dated 29 October 2008, Subject Change to AGR and Military Technician Termination and Recoupment Rules as a justification for his request. However, it was not applicable to

him as his contract would have been governed by the Selected Reserve Incentive Program guidance for fiscal year 2007, 10 August 2007 through 21 March 2008 as he signed his contract on 25 October 2006.

6. On 8 May 2024, the Army Review Boards Agency, Case Management Division, provided the advisory opinion for review and comment.

7. On 22 May 2024, the applicant responded via e-amil stating the NGB Memorandum dated 29 October 2008 stated in paragraph 2, effective 9 October 2008, any unpaid portion of the incentive would be paid to the Soldier. He also argued he was assigned to a 92A position in the 192nd Support Battalion and became 92Y MOS qualified on 25 July 2008 not on 14 August 2008. In regard to not having a copy of his bonus agreement, he had made numerous attempted to obtain it since 8 January 2010. In August of 2015, he was contacted by the Criminal Investigations Division for ■■■ ARNG regarding a fraud case involving MSG ■■■ who either plead or was found guilty of fraud in the recruitment of Soldiers.

He provided e-mail traffic which shows the applicant attempted to obtain assistance in receiving his bonus during the period of 8 January through 30 August 2010 from personnel with the ■■■ ARNG and ■■■ ARNG, with the last communication from the incentives manager advising the applicant he provided the applicant's unit information on how to process his bonus request as he recently changed from M-day Soldier to an AGR Soldier.

The remainder of the documents the applicant provided were either previously provided or found in his service record.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the available documentation showing that the applicant voluntarily transferred to the ■■■ ARNG and began new duties as a 31B prior to his eligibility for the second payment, as well as the lack of any bonus addendum within the record, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

1/6/2025

X

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. National Guard Regulation 600-7 (Selected Reserve Incentive Programs) in effect at the time, prescribes policies and procedures for the administration of the Army National Guard of the United States incentive programs.
 - a. Paragraph 7-3 (Eligibility), an enlistment bonus may be awarded to prior members of an Armed Force who:

- have completed their military service obligation
- have less than 14-years of total military service
- have never received a bonus for enlistment, reenlistment, or extension of an enlistment in a reserve component
- have received an Honorable discharge at the conclusion of their military service
- are qualified in and awarded the MOS for their position in a valid position
- if a prior member of a reserve component they must have a 12-month break in service to be eligible for the prior service enlistment bonus
- are not re-enlisting for a military technician position
- are not re-enlisting for an AGR Title 10 or Title 32 position
- complete a Prior Service Enlistment Bonus Addendum (NGB Form 600-7 -6-R-E) at the time of enlistment

b. Paragraph 7-8 (Termination with recoupment), terminate entitlement and eligibility for the Prior Service Enlistment Bonus when one of the conditions listed below occurs:

- Becomes an unsatisfactory participant
- Fails to extend for the period served in the Inactive National Guard (ING) not later than 30-days after return to unit status effective on the date of transfer to the ING
- Exceeds the maximum period for assignment to the ING
- Separates from the ARNG and enters active duty in an armed service effective on date of entry on active duty
- Does not become qualified in and awarded as primary the MOS for his position within 24-months after a voluntary transfer into another MOS effective to the date of transfer from the contracted MOS
- Separates from the ARNG for any reason, unless due to death, injury, illness, or other impairment not the result of own misconduct effective on the date of separation
- Soldier accepts a position as a military technician (includes temporary technician over 179 days and indefinite technician) where membership is a condition of employment effective on the date of employment, Soldier has served less than 6-months of the incentive contract following the date of bonus payment eligibility; termination will be with recoupment
- Accepts an AGR position on Title 10 or Title 32 effective to the date of entry on AGR status, Soldier has served less than 6-months of the incentive contract following the date of bonus payment eligibility; termination will be with recoupment

c. Paragraph 7-9 (Termination without recoupment), terminate entitlement and eligibility for the Prior Service Enlistment Bonus when one of the conditions listed below occurs. Compute the Soldier's entitlements and pay to the Soldier any amount due by calculating enlistment bonus recoupment or balance due amount by multiplying the number of months served satisfactorily during the term of which the incentive was authorized by the proportionate monthly dollar amount (by dividing the total authorized enlistment bonus by number of enlistment months), subtract the amount from the total bonus paid to the Soldier to date. If the calculation indicates overpayment to the Soldier that amount will be recouped. If the calculation indicates the Soldier has earned more than he or she had been paid to date on the same pro-rata basis, the difference would be paid to the Soldier in a final installment. Do not recoup any amounts paid, when the Soldier:

- Becomes a participant in SMP/ROTC advanced course effective on the date of order to the course
- Receives an ROTC scholarship effective on the college class start date
- Accepts a commission as an Officer or appointment as a Warrant Officer
- Soldier accepts a position as a military technician (includes temporary technician over 179-days and indefinite technician) where membership is a condition of employment effective on the date of employment, If the Soldier has served at least 6-months of the incentive contract following the date of bonus payment eligibility, termination will be without recoupment
- Accepts an AGR position on Title 10 or Title 32 effective to the date of entry on AGR status; Soldier must have served at least 6-months of the incentive contract following the date of bonus payment eligibility, If the Soldier has served at least 6-months of the incentive contract following the date of bonus payment eligibility, termination will be without recoupment

3. Department of Defense Instruction 1304.31 (Enlisted Bonus Program), establishes policy, assigns responsibilities, and prescribes procedures for a bonus payment, in accordance with Section 331 of Title 37, USC, to persons or members who:

- enlist in a military service
- affiliate with a Reserve component of a military service
- reenlist, voluntarily extend an enlistment, or otherwise agree to continue to serve in a military service
- transfer between regular and Reserve components of the military service
- transfer from one military service to another

Paragraph 4.3, the Secretary of the Military Department may offer a prior service reenlistment bonus to individuals with previous military service who reenlist in a Regular

or Reserve Component of a Military Service after a break in active duty or reserve duty.

b. Eligibility Requirements for a Prior Service Reenlistment Bonus. An individual must:

- not have previously received, or currently be entitled to, an Selective Retention Bonus in accordance with this issuance or a critical skills retention bonus in accordance with Section 355 of Title 37, USC
- not have more than 16 years of total military service and have received an honorable discharge at the conclusion of all previous periods of service
- not have been released, or not be released, from active duty for the purpose of enlistment in a Reserve Component

//NOTHING FOLLOWS//