

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 August 2024

DOCKET NUMBER: AR20230013863

APPLICANT REQUESTS: correction of his military record to show he is authorized payment of a \$5,000 Enlisted Affiliation Bonus in the Texas Army National Guard.

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

- DD Form 149 (Application for Correction of Military Record)
- Congressional Letter, 22 August 2023
- Letter, 22 August 2023, from the Texas Army National Guard (TXARNG)
- Memorandum, 22 August 2023, Notification of Eligibility
- DA Form 4187 (Personal Action), Military Service Agreement
- DD Form 4, Enlistment/Reenlistment Document, 26 September 2017

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he is requesting a review of his Enlistment Affiliation Bonus (EAB) payment of \$5,000 from the Texas Army National Guard (TXARNG). He never received the pay in 2017 (when he enlisted). He had to get a Member of Congress involved because he was told he would receive the pay when he left the ARNR in 2020, but he never did receive this pay. The system at Cam Mabry in Houston, TX show she received payment of \$5,000, but after doing a little more research, the Defense Joint Military Pay System shows he did not receive pay. Now, because the year 2017 has been fiscally closed, he has to submit this packet to reopen that year, for payment. He talked to an individual who sent him an email and informed him they knew about the error, but he still has to submit this application to the Board for payment.
3. Having had prior active service (May 2006 to September 2009), the applicant enlisted in the Regular Army on 19 November 2014. He was trained in and held military occupational specialty (MOS) 11B, Infantryman.

4. Prior to his separation from active duty, the applicant signed a DA Form 4187, on 26 September 2017, indicating that in order to receive separation pay, he agreed to serve in the Ready Reserve of a Reserve component of the Armed Forces for a period not less than 3 years following his separation from active duty.

5. The applicant was honorably discharged from active duty on 2 December 2017 in accordance with chapter 4 of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations) by reason of completion of his required active service. His DD Form 214 shows:

- He was transferred to 1st Battalion, 112th Cavalry, Houston
- He was assigned Separation Code JBK and Reentry Code 3
- He was authorized Full Separation Pay in the amount of [Dollar Amount]

6. He enlisted in the YXARNG on 26 September 2017 (amended via a DA Form 4187 to read 3 December 2017) for 3 years.

7. The applicant's DA Form 7249, Certificate of Acknowledgement of Service Requirements and Methods of Fulfillment for Individuals Enlisting or Transferring into Units of the ARNG upon Release from Active Duty or Discharge from Active Army Reserve) shows he enlisted for an Enlisted Affiliation Bonus, \$5,000.

8. On 4 December 2020, by order of The Adjutant General, TXARNG published Orders 0000858828.00 honorably separating (voluntary) the applicant from the TXARNG effective 2 December 2020, in accordance with National Guard Regulation 600-200 (Enlisted Administrative Separations), due to expiration of his term of service.

9. The applicant's NGB Form 22 (Report of Separation and Record of Service) is not available for review. Likewise, his NGB Form 23B (ARNG Retirement Points History Statement) is also not available for review.

10. On 23 August 2023, the TXARNG responded to the applicant's inquiry into his Enlistment Affiliation Bonus payment of \$5,000. The Barring Act prevents the NGB from paying on fiscally closed years. He will have 90 days from the date of this notification to request potential overdue payments from the TXARNG Incentive Management Office. If there is no response within 90 days, the contract will be marked completed. A complete approved packet from the Army Board for Correction of Military Records will be required before any future payments can be processed.

11. On 9 August 2024, the National Guard Bureau (NGB) provided an advisory opinion in the processing of his case. An NGB advisory official states:

a. The applicant requests the National Guard Bureau review the circumstances leading to his enlistment affiliation bonus contract being invalidated and non-payment of a lump sum of \$5,000.00. Soldier requests reversal of this action. The NGB recommends approval. He enlisted for 3 years in the TXARNG after qualifying for an enlisted affiliation bonus (EAB) in the amount of \$5,000.00 on 26 September 2017 per his EAB contract. The soldier claims his bonus was never paid per the EAB contract. A review of military records by the TXARNG determined that the cause of the EAB nonpayment was due to the Soldier's DD Form 214 invalid separation code.

- The applicant was given an involuntary separation code of JBK (involuntary discharge for completion of required active service).
- Section II (eligibility) of the EAB addendum states a Soldier must have a valid discharge code from the active duty to be eligible for a EAB an if not the contract would be considered invalid.
- The applicant submitted for exception to policy stating there was a transcription error when the DD Form 214 was completed and there was no adverse action against him to justify a JBK code.
- The TXARNG additionally concluded that there was no reason to justify the involuntary separation code that caused the delay in processing his EA.

b. It is the recommendation of this office in coordination with the TXARNG that the applicant's EAB be validated and a lumpsum payment of \$5,000.00 be paid to the Soldier per the contract agreement. The TXARNG stated that the Soldier completed his contract obligation, and that an out of service payment through CMS would be needed for payment, however due to the constraints of the Barring Act, an ABCMR decision would be needed. The TXARNG agrees that the Soldier is eligible for this payment. The opinion was coordinated with the assistance of the TXARNG Incentives office.

11. The applicant was provided with a copy of this advisory opinion to give him an opportunity to submit comments or concurrence/non-concurrence.

12. The Enlisted Affiliation Bonus (EAB) is offered to enlisted service members who affiliate directly in the ARNG from the Active Army. Soldiers can apply for the EAB through a Reserve Component Career Counselor (RCCC) while on Active Duty or be a service member currently assigned to the Individual Ready Reserve (IRR) with a remaining Military Service Obligation (MSO) whose last period of service was the Active Component. Critical skill positions and vacancies vary by state

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The

applicant contends his enlistment affiliation bonus contract was invalidated and he was not paid the promised \$5,000.00. The evidence shows he enlisted in the TXARNG for 3 years after qualifying for a \$5,000 EAB, on 26 September 2017. Through a series of administrative errors, none of which was attributed to the applicant, he was denied his bonus. The applicant completed his 3-year contract and is being prevented from receiving his payment due to the 6-year Barring Act. The Board reviewed and agreed with the NGB advisory officials' determination that the applicant's EAB should be validated and a lumpsum payment of \$5,000.00 should be paid to the applicant per the contract agreement.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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:

- the applicant timely submitted an exception to policy to the National Guard Bureau (NGB) for payment of his \$5,000 Enlistment Affiliation Bonus
- the NGB timely received, processed, and approved the applicant's exception to policy for payment of his \$5,000 EAB

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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, U.S. Code, § 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. Title 37, U.S. Code, § 331 (chapter II) provides for special pay, incentive pay, and bonus authorities. The Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who enlists in an armed force; enlists in or affiliates with a reserve component of an armed force; reenlists, voluntarily extends an enlistment, or otherwise agrees to serve for a specified period in a designated career field, skill, or unit of an armed force; or under other conditions of service in an armed force; transfers from a regular component of an armed force to a reserve component of that same armed force or from a reserve component of an armed force to the regular component of that same armed force; or transfers from a regular component or reserve component of an armed force to a regular component or reserve component of another armed force, subject to the approval of the Secretary with jurisdiction over the armed force to which the member is transferring.

a. Service Eligibility.—A bonus authorized by subsection (a) may be paid to a person or member only if the person or member agrees under subsection (d)— (1) to serve for a specified period in a designated career field, skill, unit, or grade; or (2) to meet some other condition or conditions of service imposed by the Secretary concerned.

b. Written Agreement.—To receive a bonus under this section, a person or member determined to be eligible for the bonus shall enter into a written agreement with the Secretary concerned that specifies— (1) the amount of the bonus; (2) the method of payment of the bonus under subsection (c)(2); (3) the period of obligated service; and (4) the type or conditions of the service.

3. Title 37, U.S. Code § 308 - Special pay: reenlistment bonus. The Secretary concerned may pay a bonus under paragraph (2) to a member of a uniformed service who— (A) has completed at least 17 months of continuous active duty (other than for training) but not more than 20 years of active duty; (B) is qualified in a military skill designated as critical by the Secretary of Defense, or by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as service in the Navy; and (C) reenlists or voluntarily extends the member's enlistment for a period of at least three years— (i) in a regular component of the service concerned; or (ii) in a reserve component of the service concerned, if the member is performing active Guard and Reserve duty (as defined in section 101(d)(6) of title 10).

4. Army Regulation 621-202, Army Educational Incentives and Entitlements, establishes policy for educational incentives and entitlements authorized by Public Law (PL). It provides Regular Army, Army National Guard (ARNG), and U.S. Army Reserve (USAR) unique policies, procedures and responsibilities governing educational benefits for Soldiers of the Active and Reserve Components (RCs).

a. Paragraph 3–17. Selected Reserve Incentive Program and the Montgomery GI Bill–Selected Reserve. A Soldier entitled to benefits under the MGIB – SR may also be eligible to participate in the following incentives: (1) Enlistment bonuses; (2) Reenlistment and/or extension bonus; (3) Affiliation bonus; and (4) SLRP.

5. National Guard Regulation 600-7, Selected Reserve Incentive Programs (SRIP), governs policies and procedures for the administration of the ARNG SRIP programs, including the Enlisted Affiliation Bonus (EAB). Under the provisions of Title 37 USC 308c this incentive is offered to an applicant who is a former enlisted member of an armed force who enlists in the SELRES (Selected Reserve) of an armed force for a period of not less than three years in a critical skill, unit, or pay grade designated by the Secretary concerned, after being discharged or released from active duty under honorable conditions. Soldier must execute a written agreement to serve as enlisted member in the SELRES and meet the eligibility criteria for affiliation as prescribed by governing law, DODI, DA, ARNG regulations or as outlined in the current Fiscal Year SRIP. Entitlement for incentive begins on the date of accession to the ARNG. The unit Commander must ensure that Soldiers are counseled when they affiliate, that they will not receive payments immediately under this program. Payments will be processed through personnel pay channels upon verification of all contractual documentation and meeting the terms and conditions outlined in the incentive agreement.

6. Title 31 U. S. Code, § 3702, also known as the Barring Act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, U. S. Code, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.

//NOTHING FOLLOWS//