

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]
[REDACTED]

BOARD DATE: 20 August 2024

DOCKET NUMBER: AR20230013987

APPLICANT REQUESTS: in effect, reversal of the decision by the U.S. Army Reserve Command to deny an Exception to Policy (ETP) for payment of her \$20,000.00 Non-Prior Service Enlistment Bonus (NPSEB) contracted on 26 June 2008.

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

- DD Form 149 (Application for Correction of Military Record)
- Cash Collections payment plan letter, 30 October 2006
- DD Form 1966 (Record of Military Processing - Armed Forces of the United States), 26 June 2008
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 26 June 2008
- DA Form 5261 (Selected Reserve Incentive Program (SRIP) - Enlistment Bonus Addendum), 26 June 2008
- Miami Dade County Florida final judgement, 22 December 2008
- Adjutant General School Human Resources Specialist Diploma, 19 February 2009
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 March 2009
- U.S. Army Central Personnel Security Clearance Facility Memorandum - Subject: Intent to Deny Security Clearance, 8 July 2009
- Applicant's appeal/rebuttal to intent to deny security clearance, 16 August 2009
- Miami Dade College class schedule, 25 August 2009
- U.S. Army Central Personnel Security Clearance Facility Memorandum - Subject: Security Clearance Determination, 30 March 2010
- Military Personnel (MILPER) Message Number 10-103 - Title: PMOS [Primary Military Occupational Specialty] 42A (Human Resources Specialist)/PMOS 42F (Human Resources Information Systems Management Specialist) Qualification and DA [Department of the Army] Direct Reclassification, 6 April 2010
- U.S. Army Central Personnel Security Clearance Facility Memorandum - Subject: [Applicant], US Verified, 6 April 2010
- Orders Number 13-168-00022, 17 June 2013
- Orders Number C-08-512389, 14 August 2015

- DD Form 4, 24 September 2015
- 724th Military Police Battalion Memorandum for Record - Subject: Personnel Security Clearance Verification, 28 October 2015
- DD Form 214, 18 June 2018
- Headquarters, 4th Legal Operations Detachment (LOD) Memorandum - Subject: Request for Exception to Policy for Bonus Payment for [applicant], 6 August 2022
- 354th Transportation Battalion Memorandum - Subject: Request for ETP for Bonus Payment for [Applicant], 11 August 2022
- 773rd Transportation Company Memorandum - Subject: Request for ETP for Bonus Payment for [applicant], 11 August 2022
- Personnel Action Packet Checklist with supporting documents, 20 September 2022
- Headquarters, U.S. Army Reserve Command (USARC) Memorandum - Subject: ETP for [Applicant], 13 September 2023
- Coastal Credit Clinic letter, no date
- Military personnel documents

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:

a. United States Army Reserve Command (USARC) G-1 disapproved the request for ETP and did not authorize payment of her NPSEB.

b. Her initial enlisted bonus addendum states "initial bonus payment 50 percent (of \$20,000.00) after receiving high school diploma and completing initial active duty for training and qualifying in MOS." All of the above was competed in the time requested in her contract. Her MOS 42A (Human Resources Specialist) required a security clearance, which took from contract date (2008) to March 2010 to complete the investigation. Denial of her security clearance was based on her credit history. She appealed the decision several times.

c. As a newly graduated Advanced Individual Training (AIT) Soldier, she was not aware of policies and regulations, or ETPs. On numerous occasions, she requested assistance from her Senior Leadership and S-1. No one was ever able to assist or provide her with proper guidance. She was always told that it was "too late and nothing can be done." It was not until 2015 that a retention master sergeant took the initiative

and worked very hard and was able to gain her security clearance. By then, it was at the end of her contract, and she had to reenlist.

d. Due to no fault of hers, should she lose out on an agreement made to her at the time of enlistment. The lack of knowledge and willingness from her Senior Leadership, "Command" and S-1 to assist or guide her in obtaining the security clearance or requesting an ETP to receive the prorated NPSEB payment within six-years from the date of MOS qualification, should not have had a negative impact on her career and bonus. Potential Soldiers should not be promised an incentive if they are not fully qualified (security clearance eligible). As a current S-1 noncommissioned officer, she would never turn away a Soldier or deny assistance.

3. A review of the applicant's official records show the following:

a. On 26 June 2008, DD Form 4 shows she enlisted in the U.S. Army Reserve (USAR) for 8 years and 6 years would be served in the Reserve Component of the Service in which she enlisted. In connection with her enlistment, the applicant completed and signed DA Form 5261 (SRIP - Enlistment Bonus Addendum) showing she enlisted for assignment in MOS 42A1OF5YY, which was authorized by Headquarters Department of the Army for bonus entitlement. In pertinent part, it states:

(1) Section IV (Obligation) – She enlisted for 6 years in the USAR and agreed to serve her initial 6 years in a bonus unit, or in a bonus MOS, unless excused for the convenience of the Government, to include normal career progression. She must have served satisfactorily, as prescribed by USAR regulations, unless excused for the convenience of the Government.

(2) Section V (Entitlement) – She was entitled to the NPSEB in the amount of \$20,000.00 and the initial payment of 50 percent of the total authorized bonus amount would be paid after receiving her high school diploma, completing Initial Active Duty for Training (IADT) and qualifying in the MOS. The remaining unpaid portion of the NPSEB would be paid in two subsequent payments of 25 percent of the total bonus paid upon successful completion of the 2nd and 4th year of the enlistment term of service.

(3) Section VI (Suspension) – She understood that under certain conditions she could be suspended on a one-time basis for a specified period from the incentive program rather than being terminated. One of the conditions of suspension was that she must have remained MOS qualified unless changed through unit reorganization, relocation, redesignation, deactivation, or conversion. If she was reassigned to a new position for any other reason and she was not MOS qualified, bonus payments would be suspended. She "must become MOS qualified within 12 months if on-the-job training is required, or within 24 months if attendance at a service school is required." If otherwise

eligible, she would be entitled to receive bonus payments (section V) when she became MOS qualified in the new position.

(4) Section VII (Termination) – The applicant's entitlement to the enlistment bonus would be terminated should any of the following conditions occur before the fulfillment of her enlistment agreement and obligation. Should she (1) Move to a non-bonused unit or MOS, or if she was reclassified. (2) Fail to become MOS qualified within 12 months, if required to perform on-the-job training, or within 24 months if required to attend a service school, following a voluntary reassignment to a bonus authorized MOS or unit other than that for which she had contracted. This could result in a recoupment action as explained in section VIII below. (3) Complete at least 6 years in a Selected Reserve unit as she agreed to do under the terms of this contract.

(5) Section VIII (Recoupment) – If the applicant's entitlement to the enlisted bonus is terminated for a reason listed in paragraphs 1 through 7 of section VII above. She may be subject to recoupment action. The recoupment amount would be calculated as follows: (a) The number of months served satisfactorily during the term of enlistment will be multiplied by the proportionate monthly dollar amount (total bonus authorized divided by 72 months). (b) The product of the above will be subtracted from the total amount of bonus paid to her to date, including initial and subsequent payments. (c) If the above calculation indicates overpayment to her, she will be required to refund that amount to the U.S. Government. If the calculation indicates she have earned more than she has been paid, she will be paid a final payment in the amount due her. (d) Any refund made by her will not affect her period of obligation to serve in the USAR.

b. On 23 September 2008, the applicant entered active duty for training.

c. On 28 March 2009, she was released from active duty training and was transferred to her USAR unit in Florida. DD Form 214 shows she completed the Human Resources Specialist and Postal Operations courses and was awarded MOS "42A10 F5."

d. On 8 July 2009, by memorandum, the U.S. Army Central Personnel Security Clearance Facility, Chief, Team E7, Adjudications Division, notified the applicant through her chain of command that the Adjudications Division made a preliminary decision to deny the applicant's security clearance due to a Credit Bureau Report dated 1 July 2008 revealing delinquent accounts. The applicant was directed to complete Statement of Reasons Receipt and Statement of Intention within 10 days from receipt of the memorandum. The applicant's access to classified information was suspended pending a final decision.

e. On 30 March 2010, by memorandum, the U.S. Army Central Personnel Security Clearance Facility, Chief, B Branch Adjudications Division notified the applicant through

her chain of command that the Adjudications Division had thoroughly evaluated the applicant's response to their intent to deny her security clearance and the Adjudications Division denied her security clearance in accordance with Department of Defense (DOD) 5200.2R, January 1987, Personnel Security Program and approved changes, and Army Regulation (AR) 380-67, 9 September 1988, Department of the Army (DA) Personnel Security Program Regulation; and approved changes.

f. On 24 September 2015, the applicant reenlisted in the USAR for 6 years.

g. On 26 July 2016, Headquarters, 81st Regional Support Command published Orders Number 16-208-00108, which promoted the applicant to the rank/grade of sergeant (SGT)/E-5, effective 1 August 2016.

h. On 2 January 2018, she entered active duty.

i. On 29 May 2018, the U.S. Army Human Resources Command (HRC) published Orders Number R-05-801602, which ordered the applicant to active duty in an Active Guard/Reserve status for 3 years with a report date of 25 June 2018.

j. On 18 June 2018, DD Form 214 shows she was released from active duty (REFRAD) and was transferred to the 333rd Military Police Brigade.

k. On 29 September 2020, HRC published Orders Number R05801602A01, which amended Orders Number R-05-801602 to show a REFRAD date of 25 June 2022 vice 24 June 2021.

l. On 13 September 2023, the Headquarters, USARC, Director Resource Management G-1 responded to the applicant's request for ETP for Bonus Payment and stated:

(1) The applicant enlisted into the USAR on 26 June 2008, for a six-year term with a \$20,000.00 NPSEB in MOS 42A, Human Resources Specialist with Additional Skill Identifier (ASI) F5, Postal Operations. The USAR Pay Center did not pay the applicant's NPSEB due to her failing to attain and maintain the required security clearance for the 42A MOS.

(2) On 18 September 2007, Headquarters Department of the Army G-1 issued a requirement for all 42A Soldiers to have a secret security clearance no later than 1 October 2010. The applicant's security clearance investigation was initiated by the United States Military Entrance Processing Command and the investigation closed on 30 October 2008.

(3) On 8 July 2009, the United States Army Central Personnel Security Clearance Facility made the initial determination to deny the applicant's security clearance. On 30 March 2010, the applicant's security clearance was denied. In accordance with MILPER Message 10-103 Soldiers who fail to obtain or maintain the required security clearance would be assigned the Additional Skill Identifier (ASI) Y2 and potentially reclassified. The applicant was not a qualified 42A from 30 March 2010 to 20 July 2015. The applicant's NPSEB eligibility is limited to the period of 26 June 2008 to 29 March 2010, which would have entitled her to a prorated NPSEB payment in the amount of \$2,916.67.

(4) Title 31, USC, section 3702(b), the Barring Act, limits claims against the government to six years after they accrue. The applicant would have had to request the ETP to receive the prorated NPSEB payment within six-years from the date of MOS qualification. Based on the circumstances, the USARC G-1 disapproves the request for ETP and does not authorize payment of the applicant's NPSEB. She may apply to the Army Review Boards Agency (ARBA) to pursue any perceived injustice. ARBA has wide-ranging authority to make determinations in cases concerning Army policy and public law.

m. On 28 February 2024, the applicant was honorably discharged from the Reserve Component by reason of disability, severance pay, non-combat related. DD Form 214 shows she completed 5 years, 8 months, and 4 days net active service this period.

4. In support of her case the applicant provides:

a. Cash Collections payment plan letter dated 30 October 2006, which served as confirmation of a payment plan agreement between the applicant and collections agency.

b. DD Form 1966 which recorded and documented the applicant's personal and personnel data, and USAR enlistment.

c. Miami Dade County Florida final judgement dated 22 December 2008, which shows the applicant was ordered to pay Midland Funding LLC a principal amount plus interest, court and attorney fees.

d. Adjutant General School Human Resources Specialist Diploma dated 19 February 2009, showing she graduated from the Human Resources Specialist Course - AIT.

e. Her appeal/rebuttal to intent to deny security clearance, dated 16 August 2009, wherein, she states in part, she received the e-mail regarding the intent to deny her security clearance due to past debts shown on her credit history. She was aware of the

debts and had been trying to correct her credit for some time now. For the past two-years she had been working with a credit repair company which she made monthly payments to. The company was called Coastal Credit Clinic. "You may contact them and see that I have indeed tried."

f. Miam Dade College transcript printed on 25 August 2009, which shows her classes, credit hours and grades.

g. MILPER Message Number 10-103 - Title: PMOS 42A (Human Resources Specialist)/PMOS 42F (Human Resources Information Systems Management Specialist) Qualification and DA Direct Reclassification, dated 6 April 2010, which states, in part:

(1) Recent changes to the minimum qualifications for PMOS 42A and PMOS 42F (Human Resources Information Systems Management Specialist), updated in reference 8 above requires a minimum-security clearance secret for Soldiers currently serving in PMOS 42A/42F or Soldiers applying for entry into MOS 42A/42F.

(2) Soldiers must meet the MOS minimum security clearance requirements no later than 30 September 2010. Soldiers currently serving in PMOS 42A/42F, who do not meet the minimum clearance requirements, must have their security clearance initiated by 1 June 2010. Soldiers must show proof that a security clearance was initiated. The Joint Personnel Adjudication System report obtained by the Soldier's Security Manager will be utilized as the source document.

(3) Individual Mobilization Augmentee/Individual ready Reserve Troop program Unit Soldiers that do not meet the MOS requirements will also receive the ASI Y2 and potentially reclassified. Soldiers will not be eligible for reenlistment or promotion with the Y2 code.

(4) Soldiers may request a one-time extension of the 1 October 2010 deadline. A maximum of three (3) months is allowed for Soldiers with an open security clearance investigation and if additional time is required for adjudication of the clearance. Soldiers who failed to initiate a security clearance prior to 1 June 2010 will not be granted an extension.

h. U.S. Army Central Personnel Security Clearance Facility Memorandum - Subject: [Applicant], US Verified, dated 6 April 2010, which shows the applicant's security clearance was denied/revoked.

i. Orders Number 13-168-00022 dated 17 June 2013, which shows the applicant was reassigned to the USAR Control Group (Annual Training), effective 21 June 2013. The reason shows "Inactivation, Reorganization or Relocation."

j. Orders Number C-08-512389 dated 14 August 2015, which shows the applicant was released from the USAR Control Group (Annual Training) and assigned to her USAR unit in Florida, effective 10 August 2015.

k. 724th Military Police Battalion Memorandum for Record - Subject: Personnel Security Clearance Verification, dated 28 October 2015, which provided security confirmation that the applicant was granted a secret security clearance on 20 July 2015, and the investigation was completed on 30 October 2008.

l. Headquarters, 4th LOD Memorandum - Subject: Request for ETP for Bonus Payment for [applicant], dated 6 August 2022, wherein, Captain A_ C_ requested reconsideration of the applicant's request for ETP for bonus payment. He provided background, analysis, and conclusion.

m. 354th Transportation Battalion Memorandum - Subject: Request for ETP for Bonus Payment for [applicant], dated 11 August 2022, wherein the intermediate commander did not provide and supporting information pertaining to the applicant's request.

n. 773rd Transportation Company Memorandum - Subject: Request for ETP for Bonus Payment for [Applicant], dated 11 August 2022, which shows, the immediate commander supported the applicant's ETP request for bonus payment.

o. Personnel Action Packet Checklist with supporting documents, dated 20 September 2022, which shows the required forms and documents she submitted in support of her request for ETP for USAR Bonus.

p. Coastal Credit Clinic letter, no date, notifying to whom it may concern that, the applicant was enrolled in their Credit Repair program.

q. Military personnel documents showing various personnel actions, orders showing reassignment, attachment, amendment, and revocation.

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.

a. The evidence shows the applicant enlisted in the USAR for 6 years on 26 June 2008 and agreed to serve her initial 6 years in a bonus unit, or in a bonus MOS 42A, HR Specialist with Additional Skill Identifier (ASI) F5, Postal Operations; for a \$20,000 NPSEB to be paid in three installments , 50% after receiving her high school diploma,

completing Initial Active Duty for Training (IADT) and qualifying in the MOS; and the remaining unpaid portion of the NPSEB would be paid in two subsequent payments of 25% paid upon successful completion of the 2nd and 4th year of the enlistment term of service. The USAR Pay Center did not pay the applicant's NPSEB due to her failing to attain and maintain the required security clearance for the 42A MOS.

b. In September 2007, HQDA issued a requirement for all 42A Soldiers to have a secret security clearance no later than 1 October 2010. The applicant's security clearance investigation was closed on 30 October 2008. She graduated from the HR Specialist Course (42A) on 19 February 2009. On 8 July 2009, Central Personnel Security Clearance Facility made the initial determination to deny the applicant's security clearance and on 30 March 2010, her security clearance was denied.

c. In accordance with MILPER Message 10-103 Soldiers who fail to obtain or maintain the required security clearance would be assigned the ASI Y2 and potentially reclassified. The applicant was not a qualified 42A from 30 March 2010 to 20 July 2015. Therefore, her NPSEB eligibility is limited to the period of 26 June 2008 to 29 March 2010, which would have entitled her to a prorated NPSEB payment. She submitted an exception to policy (ETP); however, her ETP was disapproved by USARC due to the Barring Act. She would have had to request the exception to policy to receive the prorated NPSEB payment within six-years from the date of MOS qualification.

d. The Board thoroughly reviewed and accepted the applicant's argument that she was not aware of policies and regulations, or ETPs. She had requested assistance on numerous occasions but did not receive it. She was ultimately able to gain a security clearance in 2015. The Board felt the applicant should not be penalized for her lack of knowledge and determined that while the applicant was not qualified for the entire bonus, a prorated amount for the period 26 June 2008 to 29 March 2010, in the amount of \$2,916.67 (to be determined by the pay center).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
■	■	■	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by:

- showing the applicant timely submitted her exception to policy to the U.S. Army Reserve Command (USARC) G-1 for payment of her Non-Prior Service Enlistment Bonus
- showing the USARC G-1 timely received and approved a prorated amount of the bonus for the period 26 June 2008 to 29 March 2010, in the amount of \$2,916.67 (to be determined by the pay center).

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to payment of the full amount of the Non-Prior Service Enlistment Bonus

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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. Title 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

3. Title 31, USC, section 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, USC, 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.

4. AR 601-210 (Regular Army and Reserve Components (RC) Enlistment Program) prescribes eligibility criteria governing the enlistment of persons, with or without prior service, into the Regular Army, the USAR, and the Army National Guard).

a. Paragraph 10–12 (Selected Reserve Incentives Program–Non-prior Service Enlistment Bonus) states in pertinent part, a monetary bonus is offered to eligible applicants enlisting in the Selected Reserve and complying with all of the following eligibility requirements:

(1) Has not previously served in the U.S. Armed Forces, or has served in the U.S. Armed Forces, but was released from such service before completing basic training requirements required for initial award of an MOS, and the service was characterized as either honorable or uncharacterized.

(2) Enlists in the Army National Guard or USAR with an eight year military service obligation. The Soldier may enlist for a period of 3 to 6 years in the Selected Reserve for a period of no less than two years; the enlistment must be in accordance with the USAR and ARNG SRIPs.

(3) Enlists for a position vacancy in a Selected Reserve bonus unit and/or bonus MOS, as designated by Headquarters Department of the Army or per respective

Reserve Component annual SRIP. By the time the enlistee completes IADT the position must be vacant.

(4) Currently attending high school or qualify as a secondary school graduate.

(5) Has completed IADT or received sufficient training to be deployable.

(6) Completes an enlistment bonus annex to DD Form 4 for ARNG and USAR as part of the enlistment agreement.

b. This incentive offers a monetary bonus to eligible applicants with no prior military service who enlist in the Selected Reserve and contract to serve in a designated bonus skill in accordance with the Reserve Component (RC) annual SRIP. "Soldiers will not receive any enlistment bonus payments, initial or subsequent, until they have complied with all of the eligibility criteria in this chapter." Unless otherwise announced by the DCS, G-1, payment of the bonus may be disbursed in periodic installments or lump sum, as determined by the respective RC under the currently approved SRIP. No portion of the bonus may be paid prior to completion of training, if the military skill forms the basis for which the bonus is paid.

5. Department of Defense Instruction 1205.21 (Reserve Component Incentive Programs Procedures), currently in effect, requires each recipient of an incentive to sign a written agreement stating the member has been advised of, and understands the conditions under which continued entitlement to unpaid incentive amounts shall be terminated and which advance payments may be recouped. The agreement must clearly specify the terms of the Reserve service commitment that authorizes the payment of the incentive to the member.

//NOTHING FOLLOWS//