

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 July 2024

DOCKET NUMBER: AR20230014278

APPLICANT REQUESTS: remission or cancellation of indebtedness in the amount of \$5,058.00.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:  
DD Form 149 (Application for Correction of Military Record)

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 served in the Regular Army and upon his Expiration Term of Service (ETS) in 2008, he joined the Indiana Army National Guard (INARNG) and did not receive an enlistment bonus. After joining the INARNG, he was awarded 60 percent disability compensation from the Veteran's Affairs (VA) and was unaware that he was not authorized to receive both the VA disability compensation and compensation from the National Guard. Due to his medical disabilities, he was sent through a medical evaluation board, placed on the medically retired list, and required to pay back all monies received from the National Guard. On 25 August 2023, he received notification that he was in collections from the Defense Finance and Accounting Service (DFAS) in the amount of \$5,058.00 for overpayment of an enlistment bonus from the National Guard. He had not received prior notifications as the letters were sent to a previous address where he had not lived at for over 23 years. Because of the debt and being sent to collections, his credit score has dropped significantly, and he has been negatively affected.

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

a. Having prior enlisted service in the Regular Army in Military Occupational Specialty (MOS) 25Q (Multichannel Transmission Systems Operator-Maintainer), on 29 October 2008, he enlisted in the INARNG. In conjunction with this enlistment, National Guard Bureau (NGB) Form 600-7-4-R-E (Annex B to DD Form 4 Enlisted

Affiliation Bonus Addendum ARNG of the United States) was completed showing the following:

(1) Section II (Eligibility) he was affiliating in MOS 25Q.

(2) Section III (Payments) he was affiliating for 3-years in a non-critical modified table of organization and equipment unit and would receive an affiliation bonus in the amount of \$10,000.00. He was MOS qualified. His bonus would be paid in two installments. The first 50 percent would be paid upon his enlistment in the ARNG, and the second 50 percent would be paid on his third-year anniversary.

(3) The form is void of a Bonus Control Number (BCN).

b. On 15 November 2011, a Physical Evaluation Board convened finding the applicant physically unfit and recommended his disposition be permanent disability retirement.

c. On 12 December 2011:

(1) The United States Army Physical Disability Agency (USAPDA) issued a Memorandum for Permanent Disability Retirement for disability at 40 percent and placement on the permanent disability retired list.

(2) The USAPDA issued Orders Number D 346-17 releasing him from assignment and duty because of physical disability incurred while entitled to basic pay and under conditions that permit his retirement for permanent physical disability at 40 percent disability, effective 16 January 2012.

d. On 15 January 2012, National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) reflects an honorable release from the INARNG and placement on the permanent disability retired list with transfer to the U.S. Army Reserve Control Group (Retired Reserve) with service from 16 December 2008 to 15 January 2012 for a net service this period of 3 years and 1 month.

4. On 15 April 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request stating, in effect:

a. The applicant states he never received or signed for a bonus from enlisting in the INARNG but received a collection notice from DFAS recouping a bonus of \$5,058.00 that has negatively affected his credit score as it has entered collections. He is requesting cancellation of recoupment. He did not submit any documentation in connection with his request.

b. After review of the applicant's Guard Incentive Management System (GIMS) profile and IPERMS record, he did sign a bonus addendum for \$10,000.00 upon enlisting in the INARNG on 29 October 2008. He was paid the first payment of \$5,000.00 on 3 April 2008 and then the bonus was terminated with recoupment prior to the second payment.

c. The incentive manager of the INARNG states that the bonus was terminated and recouped erroneously citing no BCN was assigned to the contract. GIMS does show a BCN making the addendum valid and the recoupment erroneous. The applicant is eligible to retain the bonus and is owed the second payment of \$5,000.00 per the Selected Reserve Incentive Program Guidance active at the time of signature of the bonus addendum.

d. It is the recommendation of this office that the applicant's request be approved. The applicant signed a bonus addendum and was paid \$5,000.00. He is owed an additional \$5,000.00 for the valid bonus addendum and cancellation of recoupment of the first payment.

e. The INARNG concurs with this advisory opinion.

5. On 18 April 2024, the applicant was provided a copy of the advisory opinion and given an opportunity to respond.

6. On 25 April 2024, he provided a rebuttal to the advisory opinion, stating in effect:

a. He did state that he never received a bonus for enlisting in the INARNG, but after finding his INARNG enlistment contract, it does reflect that he acknowledged a bonus on 29 October 2008. Therefore, he retracts his prior claim as it was made with sincerity but in error.

b. The investigation by the NGB states that he signed for a \$10,000.00 bonus, to which he received \$5,000.00 of it which leaves the question as to why there is recoupment.

c. He joined the INARNG while still under contract in the Regular Army because of the heavy pressure to request a voluntary medical evaluation from his back injuries. Instead of submitting to the request he elected to ETS and join the INARNG. While out processing from the Regular Army component, he completed the forms with a VA representative for medical evaluation for compensation and although the representative was notified of his enlistment with the National Guard, she did not express that there would be a conflict for him to receive compensation and serve in the National Guard.

d. Upon his enlistment with the INARNG, the recruiter was notified of his disability

rating and possible VA compensation and never mentioned that there would be a conflict for him to receive VA disability compensation and service in the National Guard.

e. While attending drill with his unit in the INARNG, his medical injury to his back was severe and debilitating causing him to be taken to the emergency room by his platoon sergeant. The following month, at the next drill session, a mandatory medical evaluation board was prepared. They found him to be 60 percent disabled and also discovered that he was receiving both the VA disability compensation and the National Guard compensation which is not allowed. He was required to pay back all monies paid while assigned to the INARNG.

f. From the advisory opinion it stated he was owed an additional \$5,000.00. While payment of the remainder of his enlistment bonus would be nice, he requests, at minimum, to have the debt remitted and the collections notice removed from his credit reports.

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 Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and National Guard Bureau – Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for approval finding the applicant's second payment for his enlistment bonus was recouped erroneously. The opine noted the applicant is eligible to retain the bonus and is owed his second payment of \$5,000.00 in accordance with Selected Reserve Incentive Program Guidance active at the time of signature of the bonus addendum. Based on this, the Board granted relief.

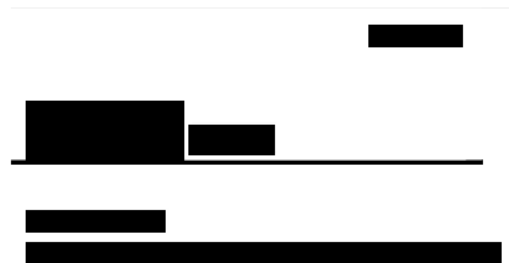
BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 records of the individual concerned be corrected to show the applicant is eligible to receive his second payment of \$5,000.00 in accordance with Selected Reserve Incentive Program Guidance active at the time of signature of the bonus addendum.



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 three 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 three-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. Army Regulation (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. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. Attacks to the barring statute have resulted in litigation in the U.S. Court of Federal Claims. In the case of *Pride versus the United States*, the court held that the Board for Correction of Military Records (BCMR) is not bound by the barring act, that the BCMR decision creates a new entitlement to payment and the 6 years starts running over again, and that payment is automatic and not discretionary when a BCMR decision creates an entitlement.

//NOTHING FOLLOWS//