

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014450

APPLICANT REQUESTS:

- payment of his Enlistment Affiliation Bonus (EAB)
- a personal appearance before the Board

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 he enlisted in the Army National Guard (ARNG) for 6 years and was to be paid an EAB in the amount of \$20,000.00 which he never received. He was unofficially discharged due to a fraudulent enlistment contract when he was assigned to the Inactive National Guard (ING) for over a year. He has been reassigned back to a drilling ARNG unit and he requests to be paid his EAB. He is willing to reenlist for the period of 4 years of non-availability.

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

a. On 11 October 2011, the applicant enlisted in the Regular Army in Military Occupational Specialty (MOS) 11B (Infantryman).

b. On 13 February 2015, the applicant was honorably released from active duty and assigned to the USAR Control Group (Reinforcement). DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 3 years, 4 months, and 3 days of active service.

c. On 3 December 2018, the applicant requested a conditional release from the USAR Control Group (Reinforcement) to enlist in the ARNG.

d. On 8 January 2019, the applicant enlisted in the ARNG.

(1) His Enlistment/Reenlistment Agreement ARNG Service Requirements and Methods of Fulfillment) states in:

(a) Section III (Explanation to Applicant), the enlistment required he commence training with the ARNG unit immediately. The applicant would be required to maintain satisfactory participation in the Ready Reserve for the entire period of service stipulated on the enlistment contract.

(b) Section IV (Acknowledgement):

- paragraph 2c states unless he was removed from an active status by proper authority, during the term of the statutory and contractual obligation he must satisfactorily participate while assigned to a troop program unit of the Selected Reserve; or if he was subsequently reassigned to the (Individual Ready Reserve (IRR), he must continue to participate satisfactorily as a member of the IRR; or if subsequently reassigned to an Individual Mobilization Augmentation (IMA) duty position, he must continue to participate satisfactorily in the IMA program.
- Paragraph 2e, he would be required to maintain satisfactory participation in the Ready Reserve for a period of 8-years, as stipulated above.

(c) Section V (Obligation and Responsibilities) states, he was counseled relative to his Reserve obligation and responsibilities. He fully understood that he must participate satisfactorily during the entire period of his enlistment in the ARNG in accordance with the rules and regulations now in effect, or which may be hereafter placed into effect, by proper authority. He was required to attend all scheduled unit training assemblies (at least 48 per year) unless he was excused by proper authorities. And he was required to satisfactorily complete one period of annual training of not less than 15-days per year. If he accrued 9 or more unexcused absences during any continuous 365-day period or fail to participate satisfactorily for any of the reasons explained or which may be placed into effect hereafter by proper authority, he may be declared an unsatisfactory participant and subject to reduction in grade and discharge from the ARNG and transfer to the IRR.

(2) The applicant's National Guard Bureau (NGB) Form 600-7-4-R-E (Annex B to DD Form 4 EAB Addendum Army National Guard of the United States) states in:

(a) Section II (Eligibility), he was discharged from active duty with assignment to the IRR. He was affiliating duty MOS qualified and being assigned to an identified

EAB critical skill list vacancy. If the MOS was not on the applicable EAB critical list, he understood the incentive would be invalid.

(b) Section III (Bonus Amount and Payments) states he was enlisting for 6-years and would receive a total bonus in the amount of \$20,000.00 less taxes in MOS 11B. He would receive the first 50 percent within 180-days of reporting to the unit. The second 50 percent would be processed within 180-days after the fourth anniversary.

(c) Section IV (Suspension) states he would be suspended from incentive eligibility and no payment would be processed during the suspension if he entered into a period of non-availability in the ING. The maximum period of non-availability is 1-year for personal reasons and 3-years for missionary obligations. He would be suspended if he received a flag with Suspension of Favorable Personnel Action (SFPA) for adverse action which excludes the Army Physical Fitness Test or failure to meet body fat standards. If he was discharged due to the SFPA, the EAB would be terminated.

He understood the reinstatement and resumption of subsequent incentive payments following the period of non-availability was not guaranteed. In order to complete a period of non-availability and to request the reinstatement of eligibility of the incentive he must complete the period of authorized non-availability within the required time limits, rejoin an existing vacancy and extend his current obligation by completing an extension agreement for the period of non-availability within 90-days upon returning to active status. Failure to comply with all requirements would result in the EAB being terminated.

(d) Section VI (Termination), paragraph 1e states if he failed to extend for the period of service while in an authorized period of non-availability within 90-days of returning to active drilling status, the effective date of the termination would be the date of assignment to the ING.

e. On 14 October 2020, Orders Number 740507, issued by the GAARNG Augoe Army Element Joint Force HQs, the applicant was assigned to the ING effective 14 October 2020 for involuntary separation or discharge.

f. On 4 October 2021, Orders Number 740507 was amended to reflect the reason for the reassignment was extension with an end date of 3 October 2021.

g. On 19 October 2021, Orders Number 14668, issued by the GAARNG Augoe Army Element Joint Force HQs, the applicant was assigned to the ING, effective 4 October 2021 for involuntary separation or discharge with an end date of 7 January 2025.

h. On 25 May 2022, Orders Number 1466810.01, issued by the GAARNG Augoe Army Element Joint Force HQs, amended Orders Number 1466810 to change the reason for the assignment to curtailment with the end date of 23 May 2022.

i. On 25 October 2022, Orders Number 2108807, issued by the GAARNG Augoe Army Element Joint Force HQs, the applicant was assigned to the ING, effective 24 October 2022 for involuntary separation or discharge with the end date of 7 January 2025.

j. On 12 June 2023, Orders Number 2108807.01, issued by the GAARNG Augoe Army Element Joint Force HQs, amended Orders Number 2108807 to reflect the applicant was assigned to an Infantryman position of the ING, effective 24 October 2022 with an end date of 10 June 2023.

j. On 12 June 2023, Orders Number 5017742, issued by the GAARNG, the applicant was reassigned to an Infantryman position, effective 11 June 2023 with an end date of 7 January 2025.

k. On 16 January 2024, the applicant extended his enlistment in the ARNG for 7 months for a new expiration term of service of 7 August 2025.

q. The applicant's NGB Form 23A (ARNG Current Annual Statement) shows in retirement years ending:

- 26 April 2019 – the applicant was a ARNG Unit member, he obtained zero Inactive Duty Training (IDT) points, 15 membership points, and zero Active Duty Training (ADT) points for a total or 15 points for retirement
- 26 April 2020 – the applicant was a ARNG Unit member, he obtained zero IDT points, 15 membership points, and zero ADT points for a total or 15 points for retirement
- 13 October 2020 – the applicant was a ARNG Unit member, he obtained zero IDT points, 7 membership points, and zero ADT points for a total or 7 points for retirement
- 23 May 2022 – the applicant was a ING member, he obtained zero IDT points, zero membership points, and zero ADT points for a total for zero points for retirement
- 23 October 2022 – the applicant was a ARNG Unit member, he obtained zero IDT points, 6 membership points, and zero ADT points for a total for 6 points for retirement
- 10 June 2023 – the applicant was a ING member, he obtained zero IDT points, zero membership points, and zero ADT points for a total for zero points for retirement

- 10 June 2024 – the applicant was a ARNG Unit member, he obtained 26 IDT points, 15 membership points, and zero ADT points for a total for 41 points for retirement

It also shows the applicant has the following period of non-creditable periods of service due to assignment in the ING: 14 October 2020 through 23 May 2022 and 24 October 2022 through 10 June 2023.

4. On 28 June 2024, in the processing of his case, the NGB, provided an advisory opinion regarding the applicant's request for payment of his EAB. The advisory official recommended disapproval of the applicant's request. The applicant enlisted in the ARNG on 8 January 2019 for 6 years. At the time he was fully eligible to enlist for an EAB. However, there is no evidence the applicant achieved a satisfactory year of service in the GAARNG. There is no record he attended any unit training assemblies until 14 October 2023. He was placed in the ING pending separation due to being a long term unsatisfactory participant. He was not aware of this because he was absent without leave. Because of his unsatisfactory performance he became ineligible to receive the EAB and is not eligible to enter into a new agreement for EAB with the GAARNG.

5. On 3 July 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. On 3 July 2024, the applicant responded via e-mail stating he told his recruiter his enlistment packet with the ARNG was no longer valid as it was supposedly a fraudulent enlistment. He contacted the GA Military Entrance Processing Station to obtain more information why his enlistment contract was voided; however, they were unable to provide him an information. He did not attend any scheduled training because he believed his enlistment contract was voided. He was assigned to the ING because a Soldier who is not actively participating in drill is placed in the ING and must be removed within a period of 3-years. He was told the GAARNG kept him on the books for the numbers. He began to attend his unit training assemblies in October 2023. He is asking to be able to reenlist for an additional 4 years in order to obtain his original bonus or to be conditionally released from the ARNG.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive review based on law, policy, and regulation. Upon review of the applicant's petition and available military records, the Board found the applicant enlisted on 8 January 2019 for a period of 6 years and in connection with his affiliation into the Army National Guard, he completed an Enlisted

Affiliation Bonus Addendum. The Board reviewed and concurred with the National Guard Bureau's (NGB) advising official finding the applicant was fully eligible at the time of his enlistment to receive the bonus; however, there is no evidence the applicant has achieved a satisfactory year of service in the Georgia Army National Guard. Due to his unsatisfactory performance, he became ineligible to receive payment of the bonus. Therefore, the Board determined relief was not warranted.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

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| : | : | : | 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. Army Regulation (AR) 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

3. Title 31 United States Code (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. National Guard Regulation 600-7 (Selected Reserve Incentive Programs), governs policies and procedures for the administration of the ARNG SRIP programs.

a. Paragraph 1-22 (Suspension of Incentives), a. Recipients of an incentive will be suspended from the program during authorized periods of nonavailability. Incentive pay is not authorized for periods of non-availability, such as:

- Approved transfer to the ING for a maximum period of 3-years
- Participation in other Department of Defense approved programs for a maximum period of 3-years
- Approved transfer to the ING/IRR for personal reasons for a maximum period of 1-year
- Non-availability in excess of the maximum period authorized will be cause for termination of incentive eligibility

b. Paragraph 1-23 (Reinstatement of incentives), Reinstatement of an incentive and resumption of subsequent payment after a period of non-availability is not guaranteed. To be eligible for reinstatement a Soldier must:

- Complete the period of authorized non-availability within the required time limit
- Extend the current contract enlistment agreement within 90-days of returning to an active status in order to serve the full incentive contract period in the ARNG
- Be assigned to a vacant position or into an existing vacancy in the SELRES authorized for the Soldier's grade and MOS in an incentive authorized unit

A Soldier who does not comply with the above requirements is subject to termination of incentive eligibility and result in recoupment of unearned amounts previously received. A Soldier who complies with the above requirements will regain entitlement to payments on the adjusted anniversary date of satisfactory creditable service provided funding is available.

c. Section III – Enlisted Affiliation Bonus (EAB), this incentive is offered to an applicant who is a former enlisted member of an armed force who enlists in the Selected Reserve (SELRES) 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.

//NOTHING FOLLOWS//