

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 August 2024

DOCKET NUMBER: AR20230014812

APPLICANT REQUESTS:

- payment of his reenlistment bonus (REB)
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum for Record Bonus Payout Request
- Orders 162-023 Transfer Orders
- Orders 298-037 Transfer Orders
- Reenlistment/Extension Bonus Addendum
- Orders 252-097 Transfer Orders
- Orders 163-059 Military Occupational Specialty (MOS) Orders
- NGB Form 23B (ARNG Current Annual Statement)
- DA Form 4187 (Personnel Action) Transfer

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:

a. He is formally requesting his bonus payout for the bonus he signed for on 15 January 2014. During the period of the REB contract establishment and signing, he was an MDAY/troop program unit Soldier assigned to an Intelligence and Sustainment company.

b. The REB contract requirements were outlined in Section II - Eligibility but during the second portion of the contract payout in 2018, he was instructed to attend All Source Analyst (35F) MOS qualification based on a command decision. Once this was

statef, he proceeded to follow guidance from the readiness Noncommissioned Officer (NCO) and fulltime leadership. He covered his basis and asked his readiness NCO if he reclassified, would it affect his bonus eligibility. He was told that it would not, as he would remain qualified as a 12Y (Geospatial Engineer) as well. He proceeded to attend 35F (Intelligence Analyst) MOS qualification and was awarded the 35F MOS on 18 May 2018.

c. Based on the aforementioned information, he is requesting that the bonus contract be honored based on incorrect guidance provided by the fulltime leadership and the incorrect coding of the position change. The reason for the MOS qualification change over should have read "command directed" as opposed to the generic transfer reason that was used. Due to human resource errors, he has not been awarded the second portion of the contracted bonus amount outlined in his addendum.

d. The issue was discovered after he asked why he did not receive his bonus even though he was eligible, during the time of eligibility. Due to this discovery, he continued to review the supporting documents and orders generated, during the time of the issue.

### 3. The applicant provides:

a. Orders 162-032, published by the Florida Army National Guard ARNG (FLARNG), 11 June 2013 transferred him from ARNG unit in Florida to an ARNG unit in Texas.

b. Orders 298-037, published by the Texas ARNG (TXARNG), 25 October 2013, transferred him from an ARNG unit in Texas to a different ARNG unit in Texas.

c. Orders 252-097, published by the TXARNG, 9 September 2014, transferred him from an ARNG unit in Texas to a different ARNG unit in Texas.

d. DA Form 4187, 25 October 2023, states he had a command directed transfer to an intelligence unit effective 18 May 2018.

### 4. The applicant's service record show:

a. DD Form 4 (Enlistment/Reenlistment Contract Armed Forces of the United States) shows he enlisted in the ARNG on 14 November 2011. He remained in the ARNG through immediate reenlistments and/or extension of his enlistment.

b. Orders 141-002, published by the FLARNG, 21 May 2013 shows his primary MOS as 12B (Combat Engineer).

c. Orders 012-010, published by the TXARNG, 12 January 2014, shows his primary MOS as 12Y and his secondary MOS as 12B.

d. REB Addendum, 15 January 2014, shows he met all reenlistment or extension eligibility, he could not reenlist for more than one Selected Reserve Incentive Program incentive contract, he must be the primary position holder, he must reenlist/extend in his duty MOS, if he was not duty MOS qualified he must become so within 24 months, he must have less than 13 years time in service. He agreed to reenlist/extend in the MOS of 12Y for 6 years to receive a bonus of \$10,000. The first 50 percent payment would be processed the day after his expiration term of service (ETS). The second 50 percent payment would be processed on the fourth year anniversary. He would retain his bonus if his MOS was changed due to unit transition, inactivation, relocation, reorganization, or conversion or if his MOS was changed due to normal career progression.

e. Orders 163-059, published by the TXARNG, 12 June 2018 awarded him the primary MOS of 35F with a secondary MOS of 12Y and an additional MOS of 12B.

f. Orders 0006609646.00, published by the TXARNG, 20 November 2023, changed his primary MOS to 42A (Human Resource Specialist) effective 17 November 2023.

5. On 2 August 2024, the Chief, Special Actions Branch, National Guard Bureau, provided an advisory opinion, which states:

a. The applicant requests payment of his second portion of his REB. NGB recommended approval of his request.

b. He extended his enlistment for six years in the TXARNG, with a REB of \$10,000 on 15 January 2014. The bonus would be paid in two installments, the first 50 percent would be processed for payment the day after his ETS. The second 50 percent payment would be processed on the four-year anniversary of his enlistment/extension.

c. A review of the documents and data within the Guard Incentives Management System shows he signed an enlistment/extension contract on 15 January 2014 with the TXARNG for a term of six years in an MOS as a 12Y.

d. A review of his claim by the TXARNG incentives office revealed he was instructed to attend 35F MOS training based on a command decision. He however did seek additional guidance from his readiness NCO knowing the termination factors within Section VI, paragraph one, subparagraph M(2) of the enlistment/extension addendum and was told that it would not affect his bonus eligibility.

e. It is the recommendation of NGB that his request be approved. The TXARNG's review of his claim concluded he was command directed to transfer out of his

reenlistment MOS 12Y to MOS 35F. He should be paid the second portion of his enlistment bonus in the amount of \$5,000 and an addition \$138.29, which was recouped from the first portion of his bonus due to the bonus termination. The TXARNG is currently working with the ARNG Incentive office to correct the bonus payout.

f. The opinion was coordinated with the TXARNG Incentives office and the ARNG Incentives office.

6. On 6 August 2024, the advisory opinion was provided to the applicant to allow him the opportunity to respond. He did not respond.

7. The applicant is still an active member of the TXARNG.

#### BOARD DISCUSSION:

1. 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 review based on law, policy, and regulation. The Board reviewed and concurred with the National Guard Bureau's advising official finding the applicant signed an enlistment/extension contract on 15 January 2014 with the Texas Army National Guard for a 6-year term in military occupational specialty 12Y and due to a command decision, the applicant attended 35F training. The applicant took the initiative to seek additional guidance on eligibility criteria and was instructed his incentive would not be affected. Based on the foregoing, the Board determined relief was appropriate and recommends the second portion of the applicant's reenlistment bonus be executed.

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:

Mbr 1      Mbr 2      Mbr 3

■	■	■	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 and Army National Guard records of the individual concerned be corrected by:

- showing the applicant fulfilled the requirements associated with his reenlistment bonus incentive contract
- payment of the second portion of his enlistment bonus in the amount of \$5,000, in accordance with his agreement, provided he is otherwise qualified
- payment of the recoupment in the amount of \$138.39 due to the bonus termination

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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, 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 37, USC, section 308 (Special Pay: reenlistment bonus) states the Secretary concerned may pay a bonus under paragraph (2) to a member of a uniformed service who is qualified in a military skill designated as critical by the Secretary of Defense, and reenlists or voluntarily extends the member's enlistment for a period of at least three years in a regular component or the Reserve component of the service concerned. Bonus payments authorized under this section may be paid in either a lump sum or in installments. If the bonus is paid in installments, the initial payment shall be not less than 50 percent of the total bonus amount.

3. DOD Financial Management Regulation (FMR), volume 7A (Military Pay Policy and Procedures – Active Duty and Reserve Pay), chapter 2 (Repayment of Unearned Portion of Bonuses and Other Benefits), section 0201 (General Provisions), provides that a member of the Uniformed Services who enters into a written agreement with specified service conditions for receipt of a bonus, special or incentive pay, educational benefits, stipend, or similar payment (hereinafter referred to as "pay or benefit"), is entitled to the full amount of the pay or benefit if the member fulfills the conditions of that pay or benefit. If the member fails to fulfill the service conditions specified in the written agreement for the pay or benefit, then the pay or benefit may be terminated and the member may be required to repay an amount equal to the unearned portion of the pay or benefit. Such repayment will be pursued unless the member's failure to fulfill specified service conditions is due to circumstances determined reasonably beyond the member's control. Conditions under which repayment will not be sought are set forth in section 0202.

4. DOD FMR, volume 7A, chapter 2, section 0202 (Repayment and Non-repayment Conditions), provides that, as a general rule, repayment action will not be pursued in situations in which the member's inability to fulfill specified service conditions related to a pay or benefit is due to circumstances determined reasonably beyond the member's control. In addition, the Secretary of the Military Department concerned has the discretion to, at some point in the process, render a case-by-case determination that the member's repayment of, or the Military Department's full payment of an unpaid portion of, a pay or benefit is appropriate based on one or more of the following:

- contrary to a personnel policy or management objective
- against equity and good conscience

- contrary to the best interest of the United States

5. Army Regulation 15-185 (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 that 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.

//NOTHING FOLLOWS//