

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 August 2024

DOCKET NUMBER: AR20230014916

APPLICANT REQUESTS: reinstatement and payment of the final portion of his Reenlistment Bonus (REB) in the amount of \$2,500.00.

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 Reenlistment/Extension Bonus Addendum Army National Guard (ARNG) of the United States), 15 February 2012
- Defense Joint Military Pay System Payment History excerpt
- Guard Incentive Management System (GIMS) excerpt
- Orders Number 348-001, 14 December 2015
- Orders Number 304-137, 31 October 2017
- Orders Number NG-6260-00017, 16 September 2016
- Memorandum, Subject: Audit of Unpaid Incentives, 4 October 2023
- Army Physical Fitness Test (APFT) History data sheet
- Army Body Composition data sheet
- Memorandum, Subject: Extended Exception to Policy - Retention of Incentives for Army Reserve (USAR) and ARNG Soldiers Accepting Active Guard/Reserve (AGR) Positions

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 is seeking his final payment of his REB, in the amount of \$2,500.00 (less taxes) which was due to him on 27 January 2018 but never paid. He remained eligible for the incentive and an attempt for payment was submitted and approved on 28 September 2019 by his unit, but due to a system error, was never processed. It was discovered on 2 October 2023 that the payment was awaiting system verification and never completed.

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

- a. On 27 July 2009, he enlisted in the Hawaii Army National Guard (HIARNG).
- b. On 6 October 2009, he entered initial active duty for training.
- c. On 27 May 2010, he was honorably released from initial active duty for training. DD Form 214 (Certificate of Release or Discharge from Active Duty), item 11 (Primary Specialty) shows Military Occupational Specialty (MOS) 68W (Health Care Specialist).
- d. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 6 October 2011 shows he extended his enlistment with the HIARNG for a period of 6 months.
- e. DA Form 4836, dated 15 February 2012, shows he extended his enlistment with the HIARNG for a period of 6 years. in conjunction with this extension, he signed NGB Form 600-7-3-R-E showing his entitlement to a \$10,000.00 REB incentive for reenlisting with the HIARNG in MOS 68W for a period of 6 years. The REB would be paid in three installments (50 percent processed for payment the day after his current expiration term of service, 25 percent on the third year anniversary, and the final 25 percent upon completion of the fifth year anniversary). This form bears Bonus Control Number R12020007XX.
- f. He continues service with the HIARNG.

4. The applicant provides the following:

- a. Defense Joint Military Pay System Payment History excerpt showing he was paid \$7,500.00 and had a remaining \$2,500.00 as his next payment.
- b. GIMS excerpt showing he was paid \$5,000.00 on 18 March 2013 and \$2,500.00 on 5 February 2016.
- c. Orders Number 348-001 dated 14 December 2015 showing he was transferred from an emergency care sergeant position to a small group leader at the Warrior Leader Course due to normal career progression.
- d. Orders Number 304-137 dated 31 October 2017 showing he was released from a Title 10 position and assigned to another Title 10 position in the AGR/Active Duty Operational Support (ADOS), effective 1 October 2017.

e. Orders Number NG-6260-00017 dated 16 September 2016 wherein the NGB ordered him to ADOS- Reserve Component duty from 3 October 2016 to 30 September 2017, as an air assault instructor.

f. Memorandum, Subject: Audit of Unpaid Incentives, dated 4 October 2023 wherein the Headquarters, HIARNG completed an audit showing the applicant did not receive the final payment of his REB in the amount of \$2,500.00 bearing the Bonus Control Number R120200007XX.

g. APFT History data sheet showing his history of completed physical fitness tests.

h. Army Body Composition data sheet showing his compliance with height and weight requirements.

i. Memorandum, Subject: Extended Exception to Policy - Retention of Incentives for USAR and ARNG Soldiers Accepting AGR Positions wherein it states, in pertinent part, ARNG Soldiers accepting positions with the AGR are able to retain their bonuses if the Soldier is assigned to an AGR position with the same MOS or continues to drill in the MOS for which the incentive was initially authorized if assigned to an SGR position that does not possess the same MOS.

5. On 28 June 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion recommending approval of the applicant's request stating, in effect:

a. On 15 February 2012, he signed a DA Form 4836 to extend his contract ending on 26 January 2013 for a period of 6 years with an obligation end date of 26 January 2019. In conjunction with this agreement, he signed Annex R to DA Form 4836 (Reenlistment/Extension Bonus Addendum).

b. He was fully eligible at the time of his extension to receive the REB. The REB was a 6-year bonus payment of \$10,000.00 to be paid in three installments (50 percent the day after the current expiration term of service, 25 percent on the third-year anniversary, and 25 percent on the fifth-year anniversary). He received the first 50 percent payment on 18 March 2013, and he received the second 25 percent on 5 February 2016. Through no fault of his own, and for reasons that are not readily apparent, the last 25 percent payment was never certified when it was due on 27 January 2018.

c. Records in GIMS show that the payment was not processed and was held in the system until 23 September 2023. The HIARNG incentives manager attempted to reconcile the payment. On 3 October 2023, the payment was returned to the State with instructions to cancel payment pending the ABCMR action because it was now in a closed year.

d. Their office recommends approval of his request to receive his final \$2,500.00 installment of the REB. He entered into this agreement with the HIARNG in good faith and maintained eligibility to receive all payments throughout his contract.

e. This opinion was coordinated with the ARNG, G-1 Operations Division, Incentives Oversight Branch.

f. The HIARNG concurs with the opinion of their office.

6. On 3 July 2024, the applicant was provided with a copy of the advisory opinion and provided an opportunity to respond. He provided a rebuttal reiterating that he never received the final payment of \$2,500.00 and was told it was because he became part of the AGR. He will await the final determination.

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 review based on law, policy, and regulation. The Board reviewed and concurred with the advisory opinion provided by the National Guard Bureau finding he was fully eligible at the time of his extension to receive the reenlistment bonus of \$10,000 in three installments of which he received the first 50 percent installment on 18 March 2013 and the second installment on 5 February 2016. The Board noted through no fault of his own, the last 25 percent installment was never certified or paid and was due on 27 January 2018. Based on the foregoing, the Board determined the applicant should be paid the remaining payment.

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 payment of the remaining reenlistment bonus, in accordance with his contract, provided he is otherwise qualified in the amount of \$2,500.

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 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. NGB Selected Reserve Incentive Program Policy Number 12-01 provides that the REB is processed in 3 installments: 50 percent the day after the current expiration term of service, 25 percent of the third-year anniversary, and 25 percent on the fifth-year anniversary.

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//