

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 September 2024

DOCKET NUMBER: AR20230015264

APPLICANT REQUESTS: remission of his officer retention bonus debt.

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 2823 (Sworn Statement)
- Manual Written Agreement, Officer/Warrant Officer Retention Bonus, Army National Guard of the United States (ARNG)
- National Guard Bureau (NGB) Exception to Policy (ETP) Disapproval, 10 July 2023

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. It was NGB's mistake to pay him the bonus. They were aware he was a dual status technician. For NGB to come back two years after the fact and ask for \$10,000 back is an undue hardship. If they had immediately said it was a mistake, he could have put the money aside and returned it. But, because of their delay, he went ahead and paid for both of his daughters to get orthodontic braces and no longer has access to the funds.

b. This is the third time he has had a large debt due to his pay being mishandled. The bonus agreement he signed states "I may be terminated from my incentive eligibility without recoupment for any of the following reasons: (Note: I must still serve the balance of the term of service entered into contractually or by statutory requirement) I accept an Active Guard/Reserve (AGR), Permanent/Indefinite Military Technician position statutory requirements." Because he completed his term of service and they already paid the bonus means it should not be recouped.

3. The applicant provides:

a. An undated, unsigned Officer/Warrant Officer Retention Bonus, which states:

(1) The applicant agreed to serve in the Army National Guard (ARNG) for a minimum of three years in the area of concentration of 13A (Field Artillery Officer) for a total bonus of \$20,000.

(2) He must not be in an AGR position or Military Technician position.

(3) He may be terminated from his incentive eligibility without recoupment if he accepts an AGR, permanent/indefinite Military Technician position where membership in the Reserve Component is a condition of employment and has served more than one day past his contract start date. The effective date of termination is one day prior to his AGR or Military Technician position start date.

b. DA Form 2823 (Sworn Statement), 22 November 2022, wherein the applicant states:

(1) In March 2022, he interviewed for the position of Range Operation Manager, at Camp Gruber and was subsequently offered the position. On 25 April 2022, he went to the Air National Guard base for his in-processing.

(2) During his in-processing the individual doing the in-brief asked if anyone had a bonus and he stated he did. They presented the policy and it stated that Military Federal Technicians "may" not be eligible for some bonuses. He interpreted that as he could or could not receive his bonus.

(3) In October 2022, when he received his bonus, he thought he must have been eligible for the bonus. He was informed on 18 November 2022 that he was incorrectly paid and that the bonus must be paid back. He has already used the bonus money and having his pay docked would be a hardship on he and his family especially into the holidays.

(4) He requested that NGB grant him relief from recoupment as he is still meeting his service obligation of the retention bonus. He still actively drills with his unit and it was not related to his federal technician position.

4. A review of the applicant's service records show:

a. NGB Form 337 (Oath of Office) shows he took the oath of office in the ARNG on 3 August 2012.

b. On 10 July 2023, the G1 Operations Division of the NGB rendered a decision in the applicant's request for an exception to policy to retain his officer reenlistment bonus. His ETP was disapproved.

c. His records is void documentation of the incentive.

BOARD DISCUSSION:

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, available military records, and the National Guard Bureau's exception to policy disapproval, the Board found his record to be void of the incentive document to confirm eligibility. Based on a preponderance of the evidence, the Board concluded no relief is warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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, 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. Department of Defense Instructions 1304.34 (General bonus Authority for Officers) states in section 3.4 (Retention Bonus) the bonus may be used by the Military Department to obtain the voluntary extension of an officer's service in exchange for an agreement to serve for a specified period in a designated military skill, career field, unit, or grade or to meet some other condition or conditions imposed by the Secretary of the Military Department concerned. Section 3.4b (Additional Retention Bonus Eligibility Requirements) states an eligible officer must have completed a minimum of 4 years of active commission service or qualifying service for a Reserve Component officer. Agree to remain on active duty or in an active status for a period of at least 2 years.

3. United States Army Reserve Policy, Selected Reserve Incentive Program (SRIP), FY21 provides recruiting and retention incentives to assist in filling critical shortages. Incentives are implemented to support unit and occupational skill staffing requirements. All incentives are subject to the availability of funds, which may change without notice. Item 12 (Officer/Warrant Officer Retention Bonus) states, in effect, Officers/ Warrant Officers assigned to a 01A, 01C, 01D, 011A, 02A, or 02B position must have a primary AOC on the FY SRIP list as bonus eligible, with a 3- or 6-year commitment beginning on the date that the written agreement is approved for a lump sum payment of up to \$20,000.00.

4. Title 37, United States Code (USC), section 332 (General Bonus Authority for Officers) states the Secretary concerned may pay a bonus under this section to a person, including an officer in the uniformed services, who agrees to remain on active duty or to serve in an active status for a specific period as an officer in a uniformed service.

a. A bonus authorized by subsection (a) may be paid to a person or officer only if the person or officer agrees under subsection (d) (1) to serve for a specified period in a designated career field, skill, unit, or grade; or (2) to meet some other condition or conditions of service imposed by the Secretary concerned. A bonus paid under paragraph (2) of subsection (a) may not exceed \$20,000.00 for a minimum three-year period of obligated service agreed to under subsection (d).

b. Subsection d states to receive a bonus under this section, a person or officer determined to be eligible for the bonus shall enter into a written agreement with the

Secretary concerned that specifies (1) the amount of the bonus; (2) the method of payment of the bonus under subsection (c)(2); (3) the period of obligated service; and (4) the type or conditions of the service.

5. 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.

6. 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 based on this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

//NOTHING FOLLOWS//