

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 September 2024

DOCKET NUMBER: AR20240000069

APPLICANT REQUESTS: payment of the remainder of his Officer Affiliation Bonus (OAB) in the amount of \$5,000.00.

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

- DD Form 149 (Application for Correction of Military Record)
- Written Agreement OAB Addendum
- 29th Infantry Division Operations Company, Memorandum, Subject: Exception to Policy (ETP) for Major (MAJ) W-, G- (the applicant)
- National Guard Bureau (NGB), Memorandum, Subject: Request for ETP for OAB

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 when he transitioned from Regular Army to the Virginia (VA) Army National Guard (VAARNG) in 2010, he signed for a \$10,000.00 OAB, which was to be paid in two installments. The first payment was to be upon in-processing into his VAARNG unit and the second payment was to be paid after 36-months in the ARNG. However, he only received one payment in 2015 which was only a portion of his OAB. The delay in the payment was an issue with the OAB paperwork which was no fault of his own. He has more than fulfilled his service requirement for the OAB and requests to be paid the remainder of his OAB.

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

a. With prior U.S. Army Reserve (USAR) enlisted service, on 13 April 2004, Orders Number 104-62-A-1227, the applicant was ordered to active duty effective 10 June 2004 due to his acceptance of an appointment in the USAR to fulfill a 3-year active duty commitment.

b. On 14 May 2004, the applicant executed his oath of office and was appointed as a Reserve commissioned officer.

c. On 8 December 2010, the applicant requested assignment orders in the 29th Tactical Command in the ARNG.

d. On 13 December 2010, the applicant signed an OAB addendum which stated in connection with his affiliation with the ARNG of the United States he agreed to serve in the Selected Reserve and he incurred a service obligation of not less than 3-years for which he would be paid a \$10,000.00 OAB which accrues beginning on the date which he was assigned to the ARNG to be paid in one lump sum. If he failed to commence or complete the service obligation that was incurred under the agreement the OAB or entitlement to a portion would be recouped. The Bonus Control Number listed on the addendum was O10120001VA and was authenticated by the applicant and a witness; however, the service representative did not sign and date the agreement.

e. On 1 February 2011, the applicant was honorably released from active duty and assigned to the ARNG. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows the applicant completed 6 years, 7 months, and 22 days of active service.

f. On 2 February 2011, the applicant executed his oath of office and was appointed in the VA ARNG in the rank of captain (CPT) and was extended a temporary Federal recognition.

g. On 2 February 2011, the applicant signed a corrected OAB addendum which stated in connection with his affiliation with the ARNG of the United States he agreed to serve in the Selected Reserve and he incurred a service obligation of not less than 6-years for which he would be paid a \$10,000.00 OAB which accrues beginning on the date which he was assigned to the ARNG to be paid in one lump sum. If he failed to commence or complete the service obligation that was incurred under the agreement the OAB or entitlement to a portion would be recouped. The Bonus Control Number listed on the addendum was O10120001VA, and was authenticated by the applicant, service representative and a witness.

h. On 9 March 2011, Orders Number 068-018, issued by the VAARNG, the applicant was appointed in the ARNG in the rank of CPT and assigned to the Effects Officer position in the 29th Tactical Command, effective 2 February 2011.

i. On 1 April 2011, Special Orders Number 75, issued by the NGB, the applicant was appointed in the VAARNG, effective 2 February 2011.

j. On 11 December 2014, the NGB approved the applicant's request for ETP to retain his OAB in the amount of \$10,000.00 due to his OAB addendum being obsolete

because the service representative signature was missing from the addendum and the bonus control number was approved after the date of his affiliation due to no fault of his own. The applicant accepted the incentive in good faith and otherwise fulfilled the obligations under the contract. Therefore, withholding the payment of the incentive would be against equity and good conscience and contrary to the best interest of the Army.

k. The applicant's DD Form 214 shows the applicant was ordered to active duty in support of Coronavirus (COVID-19), effective 21 April 2020. He was honorably released from active duty on 24 June 2020. It also shows he completed 2 months and 4 days of active service.

l. On 8 February 2021, the applicant executed his oath of office and was appointed in the District of Columbia (DC) in the rank of lieutenant colonel and was extended temporary Federal recognition.

m. The applicant remains in the ARNG.

4. The applicant provides the 29th Infantry Division Operations Company, Memorandum, Subject: ETP for MAJ W-, G- (the applicant), dated 8 April 2014, his commander requests an ETP for the applicant to receive his OAB. The commander stated the applicant is eligible to receive his OAB which he signed the agreement in December 2010 and he has met all the requirements of his contract. The error in the paperwork was no fault of his own and should be entitled to receive the OAB as promised.

5. On 9 August 2024, in the processing of this case, the NGB, provided an advisory opinion regarding request for the payment of the remainder of his OAB. The advisory official recommended approval of his request. The applicant signed an OAB in the amount of \$10,000.00 to be paid in a lump sum upon in-processing with his unit of assignment. The NGB concluded the applicant received a partial payment in the amount of \$5,000.00. The ARNG incentives office determined his bonus addendum was obsolete in that it was missing the service representative's signature and date at no fault of the applicant. It is recommended the approval of the applicant's request to be paid the remainder of his OAB in the amount of \$5,000.00 as he accepted the incentive officer in good faith and otherwise fulfilled the obligations under the contract.

6. On 21 August 2024, the Army Review Boards Agency, Case Management Division, provided the applicant the advisory opinion for review and comment. The applicant has not responded.

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 National Guard Bureau's advising official finding the evidence confirms the applicant was eligible to receive the Officer Affiliation Bonus based on incentive contract entered in good faith in the amount of \$5,000. The Board defers to the Defense Finance and Accounting Service (DFAS) for calculation of 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:

- showing the applicant timely submitted the appropriate request/form for payment of an Officer Affiliation Bonus
- showing the appropriate office timely received his request and authorized payment as a result of this correction

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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 601-210 (Regular Army and Reserve Components Enlistment Program), prescribes eligibility criteria governing the enlistment of persons, with or without prior service (PS), into the Regular Army (RA), the U.S. Army Reserve (USAR), and the Army National Guard (ARNG). Paragraph 10-15b (Officer Affiliation Bonus (OAFB), the OAFB will apply to officers of all grades who agree to serve in a Selected Reserve unit of the ARNG or USAR. DA Form 5261-6 (Selected Reserve Incentive Program - Officer Affiliation Bonus Addendum) will be completed on individuals who qualify for and agree to receive of the OAB. To be eligible for the bonus officers must:

a. Agree to serve in a critical officer skill, unit, or pay grade that is designated for bonus entitlement.

b. Agree to complete Area of Concentration (AOC) training, if affiliating for service in a designated critical AOC/MOS other than that which they currently hold, within 36-months of affiliation date.

c. Be currently serving on Active Duty (AD) for more than 30-days (the affiliation will occur at completion of the AD tour, or be a current member of a Selected Reserve not on AD.

d. If the officer previously served on AD, they must have been released from that duty under honorable conditions.

e. Have not previously served in the Selected Reserve.

f. Not be entitled to retired or retainer pay.

g. Not be affiliating to qualify for a military technician position where membership in a Reserve Component is a condition of employment for an Active Guard/Reserve position, or for assignment to an individual mobilization augmentee position.

h. Not have previously received an affiliation bonus for service in the Selected Reserve.

i. Not currently be receiving financial assistance, and will not receive such assistance or serve any related service obligation during the period of this agreement; Soldiers who have previously received loan may request termination of SLRP/Loan Repayment Program and contract to receive the OAB, provided they do not apply for or receive SLRP/College Loan Repayment Program payments for service performed after their appointment.

j. Agree to serve in the ARNG or USAR for a period not less than 3 years

3. Title 37 USC, section 332 (General bonus authority for officers), (a) Authority to Provide Bonus; the Secretary concerned may pay a bonus under this section to a person, including an officer in the uniformed services, who:

- accepts a commission or appointment as an officer in a uniformed service
- affiliates with a Reserve Component of a uniformed service
- agrees to remain on active duty or to serve in an active status for a specific period as an officer in a uniformed service
- transfers from a regular component of a uniformed service to a Reserve Component of that same uniformed service or from a reserve component of a uniformed service to the regular component of that same uniformed service
- transfers from a regular component or Reserve Component of a uniformed service to a regular component or Reserve Component of another uniformed service, subject to the approval of the Secretary with jurisdiction over the uniformed service to which the member is transferring

(b) A bonus authorized may be paid to a person or officer only if the person or officer agrees to serve for a specified period in a designated career field, skill, unit, or grade; or to meet some other condition or conditions of service imposed by the Secretary concerned.

4. Department of Defense Financial Management Regulation 7000.14, Volume 7A, chapter 56 (Ready Reserve Accession, Affiliation, Enlistment, and Retention Bonuses), purpose of this chapter is to provide policy guidance pertaining to the accession, affiliation, enlistment, and retention bonuses for members of the Ready Reserve. Paragraph 2.2 (Officer Affiliation Bonus), in accordance with Title 37, USC, section 332(a)(2) and Department of Defense Instruction 1304.34, the Secretary concerned may pay an affiliation bonus to an eligible officer in the Military Department who enters into an agreement with the Secretary to serve, for the specified period in the agreement, in the Selected Reserve (SELRES) of the Ready Reserve. The officer must enter into an agreement: to serve in a critical officer skill designated by the Secretary; or in unit of that SELRES; or a particular pay grade.

5. The Barring Act, Title 31, USC, section 3702 states that the Secretary of Defense shall settle claims involving uniformed service members' pay, allowances, travel, transportation, payments for unused accrued leave, retired pay, and survivor benefits. A claim against the Government presented under this section must contain the signature and address of the claimant or an authorized representative. The claim must be received by the official responsible under subsection (a) for settling the claim or by the agency that conducts the activity from which the claim arises within 6 years after the claim accrues. A claim that is not received in the time required under this subsection shall be returned with a copy of this subsection, and no further communication is required. 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//