

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 September 2024

DOCKET NUMBER: AR20240000085

APPLICANT REQUESTS: in effect,

- Reversal of the recoupment of his Regular Army Reenlistment/Extension Bonus (REB) plus interest and fees
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Medical records

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 in effect, he served as a U.S. Army Diver from 5 September 2012 through 15 January 2022 and he reenlisted in 2019 for 6-years and received a REB. He was hospitalized at Naval Medical Hospital Portsmouth for 6-days for attempted suicide and was deemed unfit for continued military service. Upon his release from the hospital, he was enrolled in out-patient Behavioral Health treatment. He was discharged on 15 January 2022 under the provision of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Other designated physical or mental conditions). During his out-processing from the military, he was told by legal and the transition center the REB he received would not be recouped due to the reason he was being discharged. After his discharge, he did not receive a final paycheck because the REB was being recouped. He later received a letter stating he still owed the Department of Defense \$3,000.00 which he paid. After which he received a letter stating his debt was sent to collections and he still owed \$700.00 in fees. For over a year, he attempted to contact the Secretary of the Army office to request a letter which would state due the reason for his discharge his REB should not have been

recouped. When he finally received a response, he was advised to contact the Headquarters, Department of the Army Inspector General office. He currently is employed with the Hampton Police Department and serves as a member of their dive team and a K-9 handler. Due to the recoupment of the REB his family has been struggling financially. He requests the Army reverse the recoupment of his REB plus interest and fees and be paid back the monies because he was involuntarily discharge and received an honorable character of service.

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

a. On 5 September 2012, the applicant enlisted in the Regular Army (RA) and served in Military Occupational Specialty (MOS) 12D (Diver).

b. The applicant's Enlisted Record Brief shows:

- Section I (Assignment Information): Served in Kuwait during the period of 24 May 2015 through 3 February 2016 and received a bonus in MOS 12D with an eligibility date of 1 December 2025
- Section IV – Personal/Family Data; PULHES of 111111

c. On 7 June 2016, the applicant reenlisted in the RA for 4-years with a lump sum REB.

d. On 7 March 2017, Orders Number 066-80, issued by the U.S. Army Support Activity, Joint Base Langley-Eustis, the applicant was assigned to the 7th Engineer Dive Team, Fort Shafter, HI, effective 10 July 2017.

e. On 2 December 2019, the applicant reenlisted in the RA for 6-years for a lump sum REB.

f. The applicant's DA Form 4789 (Statement of Entitlement to Retention Incentive) stated the applicant received a retention incentive for his continued service in MOS 12D and he agreed to accept \$22,800.00 for an additional obligated service for the period of 7 June 2020 through 6 June 2025. The REB would be paid in a lump sum. The incentive program is a voluntary retention program and unless he received a waiver, he would not be released from active duty before fulfilling the term of his continuous active duty agreed upon. If he failed to complete the service requirement, he agreed it may result in the termination of the agreement and repayment of any unearned portion of the incentive payment on a prorated basis, unless the failure to complete the period of active duty was due to:

- death, illness, injury or other physical impairment that was not a result of his misconduct or willful neglect or a result of other circumstances determined to be reasonably beyond his control
- separation from the military service when a waiver for recoupment had been approved by the Secretary of the Army

g. On 26 March 2020, Orders Number C1-086-009, issued by Headquarters, U.S. Army Garrison, HI, the applicant was assigned to the 92nd Engineer Replacement, Fort Eustis, Virginia, effective 10 September 2020.

h. On 9 June 2021, the applicant received a mental health evaluation which stated he was diagnosed with acute adjustment disorder with depressed mood. He was screened for post-traumatic stress disorder, major depressive disorder, traumatic brain injury, substance use disorder and military sexual trauma and he met medical retention standards. The applicant met the criteria for administrative separation and the condition was sufficient severity to interfere with his ability to function in the military. Further comments state "The disorder is of sufficient severity to interfere with the Soldier's ability to function in the Military. The Soldier is not amenable to Behavioral Health treatment nor will respond to Command efforts at rehabilitation. the medical record does not contain substantial evidence that the Soldier meets criteria for a condition requiring referral to Integrated Disability Evaluation System.

i. On 16 June 2021, the applicant was flagged for suspension of favorable personnel action for involuntary separation.

j. On 13 September 2021, the applicant's commander informed the Defense Military Pay Office the applicant was indebted to the U. S. Government in the amount of \$301.10 for Federal taxes and \$17,000.48 for his REB and he was a bonus recipient.

k. On 6 October 2021, the applicant was notified the commander intended to separate him from the Army for other designated physical or mental conditions as he was diagnosed with a mental condition that prevented him from performing his military duties. He subsequently acknowledged the notification of the commander's intent to separate him from the military, and he consulted with counsel, the applicant:

- waived his right to have his case considered before a board
- waived his appearance before an administrative separation board
- did not submit statement in his own behalf
- waived his right to counsel
- may expect to encounter substantial prejudice in civilian life
- may be ineligible for many or all benefits as a veteran under both Federal and state laws

l. On 7 October 2021, the applicant's commander submitted the proposed separation to the 7th Transportation Brigade commander recommending the applicant be separated prior to his expiration of term of service as he had been diagnosed with a mental condition which prevented him from performing his military duties. The intermediate commander concurred with the recommendation and recommended separation with an honorable character of service.

m. On 15 October 2021, the separation authority directed the applicant be separated from the Army with an honorable character of service.

n. On 27 October 2021, Orders Number 300-0003, issued by the U.S. Army Support Activity, Joint Base Langley-Eustis, the applicant was ordered to report to the U.S. Army Transition Point, effective 15 January 2022, to be discharged from the Army.

o. On 15 January 2022, the applicant was honorably discharged under the provisions of AR 635-200, condition not a disability. DD Form 214 shows the applicant completed 9-years, 4-months, and 11-days of active service.

4. The applicant provides 576 pages of medical records for review by the Board.

5. On 27 June 2024, in the processing of this case, the U.S. Army Human Resources Command, provided an advisory opinion regarding the recoupment of the applicant's REB. The advisory official recommended disapproval of the applicant's request. He received a \$22,800.00 REB for his reenlistment contract dated 2 December 2019. The REB was paid for 60-months of additional obligated service during the period of 7 June 2020 through 6 June 2025. The unearned portion of the REB was between 15 January 2022 through 6 June 2025, less than 41-months was subject to recoupment based on the Separation Program Designator on his DD Form 214. If a Soldier under a written agreement for a pay or benefit does not fulfill the service conditions for the pay or benefit under any other circumstances then repayment of the unearned portion of the pay or benefit will be sought, unless a determination to require repayment of an unearned portion of the pay or benefit would be contrary to a personnel policy or management objective, against equity or good conscience, or contrary to the best interest of the United States. The separation authority determined the applicant's situation did not rise to this level.

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

## 7. MEDICAL REVIEW:

a. Background: The applicant is requesting a reversal of the recoupment of his Reenlistment Bonus (REB) plus interest and fees. This opine will narrowly focus on summarizing the applicant's behavioral health history and will defer any decisions to the Board.

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following:

- The applicant enlisted in the Regular Army (RA) on 5 September 2012 and reenlisted on 7 June 2016 and 2 December 2019.
- The applicant's Enlisted Record Brief shows he served in Kuwait during the period of 24 May 2015 through 3 February 2016; received a bonus in MOS 12D with an eligibility date of 1 December 2025; and PULHES of 111111.
- Applicant's DA Form 4789 (Statement of Entitlement to Retention Incentive) stated the applicant received a retention incentive for his continued service in MOS 12D and he agreed to accept \$22,800.00 for an additional obligated service for the period of 7 June 2020 through 6 June 2025. The REB would be paid in a lump sum. The incentive program was a voluntary retention program and unless he received a waiver, he would not be released from active duty before fulfilling the term of his continuous active duty agreed upon. If he failed to complete the service requirement, he agreed it may result in the termination of the agreement and repayment of any unearned portion of the incentive payment on a prorated basis, unless the failure to complete the period of active duty was due to:
  - death, illness, injury or other physical impairment that was not a result of his misconduct or willful neglect or a result of other circumstances determined to be reasonably beyond his control
  - separation from the military service when a waiver for recoupment had been approved by the Secretary of the Army
- On 26 March 2020, Orders Number C1-086-009, issued by Headquarters, U.S. Army Garrison, HI, the applicant was assigned to the 92nd Engineer Replacement, Fort Eustis, Virginia, effective 10 September 2020.
- On 16 June 2021, the applicant was flagged for suspension of favorable personnel action for involuntary separation.
- On 13 September 2021, the applicant's commander informed the Defense Military Pay Office the applicant was indebted to the U. S. Government in the amount of \$301.10 for Federal taxes and \$17,000.48 for his REB and he was a bonus recipient.
- On 6 October 2021, the applicant was notified the commander intended to separate him from the Army for other designated physical or mental conditions as he was diagnosed with a mental condition that prevented him from performing his military duties. He subsequently acknowledged the notification of the

commander's intent to separate him from the military, and he consulted with counsel.

- On 7 October 2021, the applicant's commander submitted the proposed separation to the 7th Transportation Brigade commander recommending the applicant be separated prior to his expiration of term of service as he had been diagnosed with a mental condition which prevented him from performing his military duties. The intermediate commander concurred with the recommendation and recommended separation with an honorable character of service.
- On 15 January 2022, the applicant was honorably discharged under the provisions of AR 635-200. His DD Form 214 shows the applicant's narrative reason for separation as Condition, Not A Disability; with separation code JFV and reentry code 3.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he "served as a U.S. Army Diver from 5 September 2012 through 15 January 2022 and he reenlisted in 2019 for 6-years and received a REB. He was hospitalized at Naval Medical Hospital Portsmouth for 6-days for attempted suicide and was deemed unfit for continued military service. Upon his release from the hospital, he was enrolled in out-patient Behavioral Health treatment. He was discharged on 15 January 2022 under the provision of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), paragraph 5-17 (Other designated physical or mental conditions). During his out-processing from the military, he was told by legal and the transition center the REB he received would not be recouped due to the reason he was being discharged. After his discharge, he did not receive a final paycheck because the REB was being recouped. He later received a letter stating he still owed the Department of Defense \$3,000.00 which he paid. After which he received a letter stating his debt was sent to collections and he still owed \$700.00 in fees. For over a year, he attempted to contact the Secretary of the Army office to request a letter which would state due to the reason for his discharge his REB should not have been recouped. When he finally received a response, he was advised to contact the Headquarters, Department of the Army Inspector General office. He currently is employed with the Hampton Police Department and serves as a member of their dive team and a K-9 handler. Due to the recoupment of the REB his family has been struggling financially. He requests the Army reverse the recoupment of his REB plus interest and fees and be paid back the monies because he was involuntarily discharge and received an honorable character of service."

d. The active-duty electronic medical record shows on 21 May 2014, the applicant was assessed following the break-up of a romantic relationship and was experiencing suicidal ideation, mild depression, and anxiety. He did not meet diagnostic criteria for a behavioral health condition and was described as experiencing Phase of Life or Life Circumstance Problems. The applicant was provided with two additional therapy

session and was described as stable when treatment ended. On 23 April 2021, he was assessed as a walk-in appointment due to suicidal ideation with intent and plan, as a result he was psychiatrically hospitalized. The discharge summary dated 28 April 2021, states: "there was no evidence of other clinical depression, mania, anxiety, psychosis, organicity, or other major psychiatric disorders. Therefore, taking into account the psychiatric history prior to admission combined with our serial exams on the psychiatric ward, the diagnosis was determined to be most consistent with Adjustment Disorder with Depressed Mood and suspicion for Substance Induced Mood Disorder (anabolic steroid use)". The discharge summary confirmed a history of anabolic steroid use. Following his hospital discharge he was provided with individual and group therapy as well as medication management and was diagnosed with Adjustment Disorder with mixed anxiety and depressed mood. An ASAP note dated 21 July 2021 also diagnosed him with Alcohol Abuse, uncomplicated. On 9 June 2021, the applicant received a mental health evaluation for the purpose of separation. He was diagnosed with Adjustment Disorder with depressed mood. He was screened for post-traumatic stress disorder, major depressive disorder, traumatic brain injury, substance use disorder, and military sexual trauma; he screened negative for all conditions. The clinician opined he, "displayed a pattern of maladjustment to the military (due to being relocated from HI to VA) and other stressors, the disorder is of sufficient severity to interfere with the Soldier's ability to function in the military. The Soldier is not amenable to BH treatment and has not responded to Command efforts at rehabilitation. Collateral information indicates the SM underperforms, cannot manage minimal stress of his current rank, and is not able to perform MOS duties due to SI. The medical record does not contain substantial evidence that the Soldier meets criteria for a condition requiring referral to IDES. The SM can understand and participate in administrative proceedings and appreciate the difference between right and wrong. Results of the comprehensive assessment do not indicate the SM has a behavioral health condition that fails to meet medical retention standards; there do not appear to be any BH-related concerns at this time requiring consideration for medical separation." A note dated 28 September 2021, diagnosed him with Abuse of Other Non-psychoactive Substances since he continued use of anabolic steroids. The record indicates the applicant's Mood Disorder and ongoing difficulties, during the period of his separation from the Army, were related to his ongoing use of anabolic steroids.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected including 70% for Mood Disorder.

f. Based on the available information, it is the opine of this Agency Behavioral Health Advisor that there is insufficient evidence to support a reversal of the recoupment of his Reenlistment Bonus (REB) based on his behavioral health record. The record indicates the applicant functioned adequately from 2012 to 2021, with only one minor behavioral health concern related to the break-up of a romantic relationship in 2014. The evidence supports that more likely than not; his in-service mood disorder was related to his

ongoing use of anabolic steroids and the applicant had a condition, not a disability; with his separation handled in accordance with separation guidelines at the time. In addition, despite his 100% service connection, the applicant appears to experience limited, if any, functional and/or occupational impairment since by his own account he is employed as a member of the Hampton Police Department and serves as a member of their dive team and a K-9 handler.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. The Board determined 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.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The Board noted that when a Soldier under a written agreement for a pay or benefit does not fulfill the service conditions for the pay or benefit under any other circumstances then repayment of the unearned portion of the pay or benefit will be sought, unless a determination is made, on a case-by-case determination that repayment of an unearned portion of the pay or benefit would be contrary to a personnel policy or management objective, against equity or good conscience, or contrary to the best interest of the United States. The evidence shows the applicant received a \$22,800 reenlistment bonus for his reenlistment contract dated 2 December 2019. The reenlistment bonus was paid for 60 months of additionally obligated service (date after ETS, 7 June 2020 – 6 June 2025). The applicant was separated on 15 January 2022. The unearned portion of the bonus payment between his separation date (15 January 2022) and bonus obligation end (6 June 2025), less than 41 months, is subject to recoupment based on the reason for separation and separation code listed on his DD Form 214. The Board found no error or injustice in the recoupment of the unearned portion of the bonus.



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, 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. 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 37 USC, section 308 (Reenlistment Bonus), (d) A member who does not complete the term of enlistment for which a bonus was paid to the member under this section, or a member who is not technically qualified in the skill for which a bonus was paid to the member under this section, shall be subject to the repayment.

4. Title 37 USC, section 331 (General bonus authority for enlisted members), (a) The Secretary concerned may pay a bonus under this section to a person, including a member of the armed forces, who:

- enlists in an armed force
- enlists in or affiliates with a reserve component of an armed force
- reenlists, voluntarily extends an enlistment, or otherwise agrees to serve for a specified period in a designated career field, skill, or unit of an armed force
- under other conditions of service in an armed force

(g) (Repayment), a person or member who receives a bonus under this section and who fails to complete the period of service, or meet the conditions of service, for which the bonus is paid, as specified in the written agreement under subsection (d), shall be subject to the repayment.

5. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//