

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 September 2024

DOCKET NUMBER: AR20240000839

APPLICANT REQUESTS:

- remission/cancellation of his indebtedness for his Reenlistment Bonus (REB)
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statement
- Reserve/Guard Bonus Recoupment Worksheet
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 4 December 2012
- National Guard Bureau (NGB) Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 REB Addendum Army National Guard (ARNG) of the United States, 4 December 2012
- Defense Joint Military System – Reserve Component (DJMS-RC) Leave and Earnings Statement History
- NGB Memorandum, Subject: Request for Exception to Policy (ETP) for REB Staff Sergeant (SSG) C-, C- (the applicant)
- Florida National Guard (FLARNG) Office of the Adjutant General Memorandum, Subject: Notification of Incentive Eligibility Termination
- NGB Form 22 (Report of Separation and Record of Service)
- FLARNG Army Element Joint Force Headquarters (HQs) Orders Number 344256
- Defense Finance and Accounting Service (DFAS) letter, 13 February 2023
- Applicant letter to the Department of the Treasury
- Applicant e-mail to Sergeant Major (SGM) M- O-, 20 August 2023
- Applicant e-mail to SGM M- O-, 23 August 2023
- DFAS letter, 6 October 2023

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 part, he was never notified his transfer from Military Occupational Specialty (MOS) 12B (Combat Engineer) to a 35M (Human Intelligence Collector) position would affective his REB nor the recoupment of the REB would cause him to repay it back to DFAS. Also, the signature on the extension and contract for the REB were forged and he should not be required to repay the debt.

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

a. On 9 February 2004, the applicant enlisted in the ARNG. The applicant enlisted for a MOS bonus for critical skill MOS 21B (Combat Engineer) to receive a \$3,000.00 enlistment bonus. The addendum stated the applicant understood the bonus would be terminated with recoupment if he voluntarily transferred to a non-bonus unit or out of a critical skill MOS for which the incentive was received.

b. On 20 February 2004, Orders Number 4051011, issued by the Military Entrance Processing Station, the applicant was ordered to initial active duty for training, effective 10 May 20024.

c. On 27 August 2004, the applicant was honorably released from active duty and was awarded MOS 21B.

d. On 12 March 2005, Orders Number 044-100, issued by the State of Florida (FL) Department of Military Affairs Office of the Adjutant General, the applicant was ordered to active duty in support of Operation Enduring Freedom, effective 1 April 2005.

e. On 17 October 2006, the applicant was honorably released from active duty.

f. On 17 August 2009, the applicant extended his enlistment in the ARNG for 1-year and 2-months for a new Expiration Term of Service (ETS) of 8 April 2011.

g. On 1 December 2009, Orders Number 111-187, issued by the State of FL Department of Military Affairs Office of the Adjutant General, the applicant was ordered to active duty in support of Operation Iraqi Freedom, effective 2 January 2010.

h. On 18 February 2011, the applicant was honorably released from active duty.

i. On 18 March 2011, the applicant extended his enlistment in the ARNG for 1-year for a new ETS of 8 April 2012.

j. On 11 March 2012, the applicant extended his enlistment in the ARNG for

1-year for a new ETS of 8 April 2013.

k. On 4 December 2012, the applicant extended his enlistment in the ARNG for 6-years for a new ETS of 8 April 2019. At the time of his extension the applicant signed NGB Form 600-7-3-R-E agreeing to extend his enlistment with the ARNG in MOS 12B for 6-years to receive a lump sum bonus in the amount of \$10,000.00 to be paid the day after his current ETS. The addendum states in Section VI (Termination), the applicant would be terminated from REB eligibility with recoupment if he voluntarily changed his REB MOS during the contractual obligation and the termination date will be the date the transfer was reflected on his order.

l. On 16 November 2015, Orders Number 320-011, issued by FLARNG Office of the Adjutant General, the applicant was assigned to B Company, 260th Military Intelligence (MI) Battalion (BN) as a Human Intelligence Collector Sergeant in MOS 35M, effective 15 November 2015. The additional instructions stated if Soldier is receiving any type of Incentive Pay, Unit must submit a request for termination of pay prior to approval of transfer or reassignment. All Soldiers are responsible for ensuring, that if they are receiving any type of special, incentive or professional pay and they no longer perform those duties to receive this pay, they must immediately inform their unit to stop those pay actions. If this does not occur, Soldier can be liable for collections. Selected Reserve Incentive Program (SRIP): Yes, Termination: No

m. On 6 December 2015, the applicant extended his enlistment in the ARNG for 1-year for a new ETS of 8 April 2020.

n. On 12 February 2016, the NGB disapproved the applicant's request for an ETP to retain his REB in the amount of \$10,000.00 due to his voluntary transfer out of his contracted MOS which violated the Department of Defense Instruction (DoDI) 1205.21 (Reserve Component Incentive Program Procedures). He was contracted for MOS 12B; however, his current MOS was 35M.

o. On 21 July 2016, the FLARNG Office of the Adjutant General notified the applicant his eligibility for his REB was terminated per the denial of his ETP to retain the REB in the amount of \$10,000.00.

p. The applicant's Personnel Qualification Record dated 20 September 2016 shows his: Duty MOS – 35M; Current term start date – 4 December 2012; Primary MOS – 12B; Date of bonus – 4 December 2012; and Bonus MOS – 12B

q. On 22 March 2018, Orders Number 081-003, issued by the FLARNG Office of the Adjutant General, the applicant was assigned to the Inactive National Guard of B Company, 260th MI BN, effective 15 March 2018, due to being currently under investigation.

r. On 30 October 2019, Orders Number 303-091, issued by the FLARNG Office of the Adjutant General, the applicant was assigned to a valid position within B Company, 260th MI BN. The additional instructions stated if Soldier is receiving any type of Incentive Pay, Unit must submit a request for the termination of pay prior to approval of transfer or reassignment. All Soldiers are responsible for ensuring, that if they are receiving any type of special, incentive or professional pay and they no longer perform those duties to receive this pay. That they must immediately inform their unit to stop those pay actions. If this does not occur, Soldier can be liable for collections.

s. On 8 April 2020, the applicant was honorably discharged from the FLARNG due to ETS. NGB Form 22 shows the applicant completed 16-years and 2-months of service.

t. On 23 April 2020, Orders Number 344256, issued by the FLARNG Army Element Joint Force HQs, the applicant's service was terminated due to voluntary separation, effective 8 April 2020, due to his ETS.

4. The applicant provides:

a. Reserve/Guard Bonus Recoupment Worksheet shows the applicant was paid a \$10,000.00 bonus for a 72-month contract; he was credited with completing 33-months of the contract. The applicant's bonus was terminated on 22 January 2016. Based on the monthly rate of \$138.89 the applicant earned \$4,583.33 for a recoupment balance of \$5,416.67 minus \$54.49 for a recoupment balance of \$5,362.18.

b. DJMS-RC Leave and Earnings Statement history dated 8 November 2013 which shows the applicant was paid a bonus in the amount of \$10,000.00.

c. DFAS letter of indebtedness dated 13 February 2023 shows the applicant's indebtedness balance of \$5,436.68 for the collection of Service Members Group Life Insurance premiums paid in his behalf during the period of August through November 2018 and recoupment of unearned portion of his National Guard bonus.

d. Applicant's letter to the Department of the Treasury dated 2 August 2023 where the applicant disputes the indebtedness. He stated he did not owe a debt in the amount of \$7,140.71 and he never owed a debt to DFAS. While he was in an active status with the FLARNG, he never was notified he owed money or had a debt nor was he notified after his service. He found out of the indebtedness when his spouse noticed his credit score dropped by 150 points due to a debt with DFAS in the amount of \$5,400.00. He contacted DFAS, who could not advise him the reason for the indebtedness. He contacted his previous unit and was advised the debt was due to his violation of his extension contract when he transferred out of his contract MOS though he was told prior to his reassignment it would not affect his bonus because both MOSs were critical

MOSs. The applicant also stated that upon a closer inspection of his DA Form 4836 and the bonus addendum, his signature was forged, and the forms were not signed and witnessed by Captain A- M-. He does not owe this indebtedness and he requests it be removed from his credit report and be cancelled with DFAS.

e. E-mail to SGM M- O- requesting assistance in removing the debt from his DFAS and credit records and the cancellation of the debt. He also stated he was not notified of the indebtedness while he was in the ARNG nor was he notified of his discharge from the service.

f. DFAS letter dated 6 October 2023 which notified the applicant of the hearing decision for his contesting of his indebtedness, it was determined the applicant's debt remained valid and the amount of the indebtedness was correct. The applicant was provided due process and collection of the debt by administrative wage garnishment, not to exceed 15 percent of disposable pay was proper.

5. On 31 July 2024, in the processing of his case, the NGB, provided an advisory opinion regarding the applicant's request for the remission or cancellation of his REB indebtedness. The advisory official recommended the disapproval of the applicant's request. The applicant extended his enlistment with the FLARNG on 4 December 2012 for 6-years with a \$10,000.00 lump sum bonus in the MOS 12B. The lump sum payment was effective on the day after the applicant's ETS. The applicant transferred out of his bonus unit and his contracted MOS of 12B to a new unit and position which was MOS 35M. The applicant claimed he was not aware the REB would be recouped; however, the bonus addendum signed by the applicant states his bonus will be terminated with recoupment if he transferred out of his reenlistment/extension MOS into a non-duty MOS qualified MOS. A sworn statement provided by the FLARNG shows the applicant was aware he violated his contractual agreement by switching from MOS 12B to 35M. The sworn statement was dated 12 December 2015 and therefore well ahead of his claim he did not know his bonus would be prorated and recouped prior to his spouse making him aware in 2023.

6. On 6 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:

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 evidence shows the applicant extended his enlistment with the FLARNG on 4 December 2012 for 6 years with a \$10,000.00 Reenlistment/Extension (REB) lump sum bonus in the MOS 12B. The lump sum payment was effective on the day after his ETS. The evidence also shows the applicant transferred out of his bonus unit and his contracted MOS of 12B to a new unit and position which was MOS 35M. The applicant contends that he was unaware the REB would be recouped; however, the bonus addendum signed by the applicant states his bonus will be terminated with recoupment if he transferred out of his reenlistment/extension MOS into a non-duty MOS qualified MOS. The Board reviewed and agreed with the State ARNG and the NGB's finding that the applicant was aware he violated his contractual agreement by switching from MOS 12B to 35M. Therefore, the Board determined relief is not 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.

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

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. National Guard Regulation (NGR) 600-7 (Selective Reserve Incentive Programs), prescribes policies and procedures for the administration of the ARNGUS incentive programs.

a. Paragraph 1-24 (Termination of incentives), A Soldier's incentive eligibility and entitlement stop when any of the termination reasons listed within the applicable chapters of this regulation apply. Although the Soldier's entitlement to the incentive is terminated, the Soldier's responsibility to serve the current statutory or contractual obligation remains. Once a Soldier has been terminated, reinstatement of eligibility is not authorized. The unit commander or an authorized unit representative will initiate termination procedures when a Soldier is terminated from an incentive. Termination with recoupment is defined as termination of the incentive with Soldier is entitled to a prorated incentive amount based on the number of months served satisfactorily prior to the incentive termination date. The Soldier may be required to pay funds back to the government or the Soldier may be entitled to a payment.

b. Paragraph 2-14 (Entitlement), Entitlement to an REB for an immediate reenlistment or extension begins on the date after ETS. The unit commander must ensure that Soldiers are counseled when they reenlist or extend that they will not receive payments immediately under this program.

c. Paragraph 5-4 (Termination of an incentive contract), Termination with or without recoupment - Additional payments scheduled. The following actions are required for all incentive terminations with or without recoupment that would otherwise result in recoupment of monies paid or forfeiture of further incentive payments. The State will notify the Soldier and the Soldier's current unit of assignment of the issue requiring incentive termination and the ETP option.

3. Army Regulation (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.

4. 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.

5. DoDI 1205.21 (Reserve Component Incentive Program Procedures), to update policy, assign responsibilities, and prescribe procedures under reference (b) for management of the Reserve components incentive programs. Paragraph 6.8. (Termination and Recoupment), if entitlement to an incentive is terminated for any reason before the fulfillment of the service described in the member's written agreement, that member shall not be eligible to receive any further incentive payments, except for payments for service performed before the termination date. Unless granted relief the member must refund a prorata amount to the Government, if such termination is for movement to a non-bonus skill or unit, unless the move is required by the Reserve component.

//NOTHING FOLLOWS//