

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 November 2024

DOCKET NUMBER: AR20240001619

APPLICANT REQUESTS: repayment of his recouped Enlisted Affiliation Bonus (EAB)

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

- DD Form 149 (Application for Correction of Military Record), 26 January 2024
- Defense Finance and Accounting Service (DFAS) Leave and Earnings Statement (LES), December 2016
- DFAS, LES, December 2017
- DFAS, LES, December 2018

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. He was medically separated on 1 February 2018. He owed \$10,000 for a bonus that was recouped when he was medically discharged.

b. Prior to going into the Reserve Component from active duty he was on the semi-centralized promotions (P) status for automatic promotion if his points dropped to 39. He also met the time in service and time in grade requirements but when he went into the Reserve Component his points vanished.

c. When he was processed through the Integrated Disability Evaluation System in 2017, his grade determination was not sent to the Army Grade Determination Review Board.

d. He was given a bonus when he signed his Army Reserve contract after he left active duty, but it was recouped in 2018.

e. He cites a portion of Title 10, U.S. Code (USC), Section 1207, Title 10, USC, Section 1413a(e), and Chapter 61 as justification for his requests.

f. "Repayment shall not be sought and any remaining unpaid portion of a pay or benefit due to a member under a written agreement shall be paid at the time of separation or retirement for a disability described under Chapter 61 of Title 10, USC., that was incurred in the line of duty in a combat zone designated by the President or the Secretary of Defense or in a combat-related operation designated by the Secretary of Defense, and/or for a combat-related disability, as defined under section 1413a(e) of title 10, USC Repayment will be sought and any unpaid balances may not be paid to members who incur a disability as a result of their misconduct. (See 10 USC Â§1207.) In all other instances involving a member's separation for medical reasons not falling under Chapter 61 or section 1413a(e), which were not the result of the member's misconduct."

3. The applicant provides copies of three LES printouts from DFAS, showing:

- a. As of December 2016, he was paid \$10,000.00 bonus type 08.
- b. As of December 2017, the gross amount recoup was \$9444.44.
- c. As of December 2018, the gross amount recoup was \$9444.44.

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

a. On 4 April 2010, he enlisted in the Regular Army for 3 years and 21 weeks. He completed basic combat training, he completed advanced individual training, and he was awarded military occupational specialty (MOS) 92G (Food Service Specialist).

b. On 29 June 2012, he reenlisted in the Regular Army for 3 years beginning at rank/pay grade specialist 4 (SP4)/E-4. This reenlistment provided him no bonus entitlement.

c. On 27 February 2014, he reenlisted for 3 years at rank/pay grade SP4/E-4. This second reenlistment provided him no bonus entitlement.

d. Orders 189-0100, issued by Headquarters (HQ), III Corps and Fort Hood, dated 7 July 2016, reassigned him to Army Transition Point for transition processing. These orders show his rank/pay grade as private first class (PFC)/E-3.

e. Orders 236-0141, issued by HQ, III Corps and Fort Hood, rescinded so much of Orders 189-0100, dated 7 July 2016. His grade/pay grade was shown as PFC/E-3.

f. Orders 236-0162, issued by HQ, III Corps and Fort Hood, released him from active duty (REFRAD) with a date of REFRAD of 16 September 2016.

g. On 16 September 2016, he was honorably REFRAD and transferred to the control of Company E, 7th Battalion, 158th Aviation Regiment, Fort Hood, U.S. Army Reserve (USAR). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows his rank/pay grade as PFC/E-3, and he completed 6 years, 5 months, and 10 days of net active service this period.

h. His Enlisted Record Brief (ERB), dated 19 September 2016, shows he was promoted to SPC/E-4 on 1 September 2016.

i. On 6 December 2017, an Informal Physical Evaluation Board (IPEB) found him physically unfit and recommended a rating of 20% and that his disposition be separated with severance pay. The medical condition determined to be unfitting was lumbosacral strain with 20% disability rating. He reported onset of the condition while on Active Duty in 2014 after slipping and falling in the dining facility while carrying heavy equipment at Fort Hood. He reported aggravation of the condition due to performing primary MOS duties. Treatment thus far had not yet relieved the condition. His left knee and right knee patellofemoral pain syndrome was found not to be unfitting for service. This case was adjudicated as part of the Integrated Disability Evaluation System.

j. On 7 December 2017, he met with the Physical Evaluation Board Liaison Officer and having been advised of the findings and recommendations of the IPEB and having received a full explanation of the results of the findings and recommendations and legal rights pertaining thereto, he concurred with the results of the IPEB and waived a formal hearing of his case.

k. On the same date, he did not request a reconsideration of his Department of Veterans Affairs ratings.

l. On 11 January 2018, a representative for the Secretary of the Army approved the findings and recommendations of the IPEB.

m. Order D 362-09, issued by the U.S. Army Physical Disability Agency, dated 28 December 2017, honorably discharged him from the USAR under provisions of Army Regulation 635-40 ((Disability Evaluation for Retention, Retirement, or Separation). He was authorized disability severance pay with a 20% disability in grade E-4 based on 6 years, 9 months, and 8 days of service as computed by Section 1208, of Title 10 USC.

n. On 13 May 2019, he was issued a DD Form 215 (Correction to DD Form 214) for the period ending 16 September 2016 which shows his:

- rank was amended to SPC
- pay grade was amended to E-4
- date of rank was amended to 1 September 2016

o. On 31 July 2020, in ABCMR Case Number AR20180010189, the Board denied his request for medical retirement.

5. On 22 October 2024, HQ, USAR Command provided the Army Review Boards Agency (ARBA) an advisory opinion in response to his issues. The advisory reads:

a. The (applicant) enlisted in the USAR on 17 September 2016 for a six-year term, with a \$10,000 Enlisted Affiliation Bonus (EAB) for MOS 92G, Culinary Specialist. His unit reported him as an unsatisfactory participant, which resulted in the USAR Pay Center terminating his EAB on 3 December 2016. Army policy mandates the termination and recoupment of a Soldier's incentives upon accumulating nine or more unexcused absences within a 12-month period.

b. Based on the current information provided in this case, the USAR Command (USARC) G-1 recommends no relief.

6. On 25 October 2024, the applicant was provided a copy of the USARC advisory and on the same date the applicant responded to this advisory:

a. He disagreed with the advisory opinion based upon regulations for his medical separation not due to misconduct. The \$10,000.00 bonus should not have come out of his final pay since he was medically boarded.

b. Repayment shall not be sought and any remaining unpaid portion of a pay or benefit due to a member under a written agreement shall be paid at the time of separation or retirement for a disability described under Chapter 61 of Title 10, USC, that was incurred in the line of duty in a combat zone designated by the President or the Secretary of Defense or in a combat-related operation designated by the Secretary of Defense, and/or for a combat-related disability, as defined under section 1413a(e) of Title 10, USC. Repayment will be sought, and any unpaid balances may not be paid to members who incur a disability as a result of their misconduct. See Title 10 USC, Section 1207. In all other instances involving a member's separation for medical reasons not falling under Chapter 61 or section 1413a(e), which were not the result of the member's misconduct, the Secretary concerned has the discretion to determine whether to require repayment of the unearned portion of the pay or benefit, or to pay an unpaid balance of a pay or benefit

7. His available records are void of a DD Form 4 (Enlistment/Reenlistment document), dated 17 September 2016 showing a reenlistment and EAB agreement for MOS 92G.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the findings outlined in the USARC advisory opinion (specifically, that the applicant was found to be an unsatisfactory participant prior to his medical separation), the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military pay record.

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.

X 

CHAIRPERSON

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 635-40 (Disability Evaluation for Retention, Retirement, or Separation), currently in effect at the time, 19 January 2017, States Code, Chapter 61 (Title 10, USC, Chapter 61) and Department of Defense Directive 1332.18. It sets forth policies, responsibilities, and procedures that apply in determining whether a Soldier is unfit because of physical disability to reasonably perform the duties of his or her office, grade, rank, or rating. If a Soldier is found unfit because of physical disability, this regulation provides for disposition of the Soldier according to applicable laws and regulations.

a. Separation with disability severance pay. This disposition is directed under Title 10, USC, Section 1203 or Title 10, USC, Section 1206, as applicable, when the Soldier is unfit due to a compensable physical disability determined under the standards of this regulation, and the Soldier has less than 20 years of service computed under Title 10, USC, Section 1208. The Soldier's combined disability rating is less than 30 percent, to include a rating of zero percent.

b. Paragraph 4-3. Soldiers absent without leave, undergoing or pending adverse actions or involuntary administrative separation, or with prognosis of imminent death.

c. Paragraph 4-9. Disenrollment from the Disability Evaluation System (DES) as a result of certain adverse circumstances or actions. Soldiers pending adverse actions or involuntary administrative actions are eligible for the DES as set forth in paragraph 4-3. Reserve Component Soldiers with unexcused absences. Reserve Component Soldiers who have nine or more unexcused absences from scheduled inactive duty training during a one year period will be considered unsatisfactory participants. They will not be referred to or continue DES processing unless the Soldier has a documented Line of Duty medical condition which fails medical retention standards. The condition must be the direct medical cause or a significant contributing factor to the unexcused absences. Exceptions will be for those Reserve Component Soldiers who have clear and incontrovertible evidence in the form of a documented Line of Duty or equivalent establishing a direct cause for their absences, as determined by military medical authorities.

3. Department of Defense 7000.14-R (Financial Management Regulation), Volume 7A, Chapter 2, in effect as of February 2024, establishes policy pertaining to the repayment of unearned portions of bonuses and other benefits.

a. Repayment of Unearned Portion of Bonuses and Other Benefits.

Section 1.1: A member who enters into a written agreement with specified service conditions for receipt of a bonus, special or incentive pay, educational benefits, stipend, or similar payment (hereinafter referred to as “pay or benefit”) is entitled to the full amount of the pay or benefit if the member fulfills the required conditions. Failure to fulfill the conditions specified in the written agreement will result in termination of the agreement, and the member will be required to repay the unearned portion of the pay or benefit. Such repayment will be pursued unless the member’s failure to fulfill the specified conditions is due to circumstances determined reasonably beyond the member’s control. Conditions under which repayment will not be sought are set forth in section 3.0.

b. Repayment and Non-Repayment Conditions. Section 3.1.1: When the conditions of a written agreement are not fulfilled and repayment is determined appropriate, the member will be required to repay the United States the unearned portion of a pay or benefit. In cases other than death of a member, the Secretary of the Military Department concerned will advise DFAS of the disposition of any unearned portion of a pay or benefit.

c. Section 3.1.2: Repayment will be sought, and any unpaid balances may not be paid to members who incur a disability because of their misconduct.

d. Section 3.3: Conditions Under Which Repayment Will Not Be Sought. As a general rule, repayment action may not be pursued in situations in which the member’s inability to fulfill specified service conditions related to a pay or benefit is due to circumstances determined reasonably beyond the member’s control. Payment of any unpaid portion of pay or benefit will be subject to the rules in Table 2-1, which in appropriate circumstances provide discretion to the Secretary of the Military Department concerned to pay unearned portions based on case-by-case determinations.

e. Table 2.1. Disposition of Unearned Portions of Bonuses, Special Pay, Educational Benefits, or Stipends. Rule 3:

(1) If a member under a written agreement for a pay or benefit, incurs an injury or illness, through no misconduct of the member, that precludes the member from fulfilling the service conditions specified in the written agreement; and

(2) The member is the member is separated, other than as described in Rule 2, for medical reasons as a result of an injury or illness;

(3) Then repayment of the unearned portion of the pay or benefit will not be sought, unless the Secretary of the Military Department concerned determines that repayment of the unearned portion is appropriate due to a personnel policy or management objective, equity, or good conscience, or it is in the best interest of the United States.

(4) Any unpaid pay, or benefit under Title 10, USC, or Title 37, USC, will not be paid, unless the Secretary of the Military Department concerned makes a determination consistent with Rule 9, Column E.

//NOTHING FOLLOWS//