

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 November 2024

DOCKET NUMBER: AR20240002124

APPLICANT REQUESTS: entitlement to payment of 2018 Reenlistment Bonus (REB) (first installment \$7,500.00).

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

- DD Form 149 (Application for Correction of Military Record)
- DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), 28 February 2018
- National Guard Bureau (NGB) Form 600-7-4-R-E (Annex R to DD Form 4 or DA Form 4836 REB Addendum Army National Guard of the U.S.), 28 February 2018
- Orders Number 270-001, 27 September 2018
- Memorandum – Subject: Incentive Claims Packet, 17 January 2024
- DD Form 827 (Application for Arrears Pay), 8 February 2024
- Guard Incentive Management System (GIMS) information

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 pertinent part he is entitled to the initial installment of his 2018 REB. He contests that he was under the impression that since he accepted an Active Guard/Reserve (AGR) position within 1 year of his reenlistment, his entitlement to the REB was terminated. However, in 2024, the State Incentives Manager advised that he was entitled to the initial payment (\$7,500.00) of the \$15,000.00 REB because he did not enter the AGR program until 1 October 2018.

3. A review of the applicant's available service records reflects the following:

a. On 11 January 2013, the applicant enlisted in the Army National Guard (ARNG) for 8 years with duty as a 92A (Automated Logistical Specialist).

b. On 15 May 2013, the U.S. Army Combined Arms Support Command issued Orders Number 135-00317 awarding the applicant the 92A Military Occupational Specialty (MOS), effective 3 July 2013.

c. On 28 February 2018, the applicant elected to extend his enlistment in the ARNG by 6 years with entitlement to a \$15,000.00 REB to be disbursed in 2 increments (50 percent processed the day after the applicant reaches his current expiration term of service and 50 percent processed on the fourth-year anniversary of his contract start date). NGB Form 600-7-4-R-E, Section VI (Termination) provides understanding by the applicant that if he separated from the ARNG for enlistment into an active component or if he accepted an AGR position or a One Time Occasional Tour (OTOT), his entitlement to the REB would be terminated effective the date of his discharge from the ARNG or the date that he accepted the AGR position.

d. On 27 September 2018, the FLARNG issued Orders Number 270-001 ordering the applicant to a period of AGR Full Time National Guard Duty (FTNGD) on an OTOT for 5 months and 31 days, effective 1 October 2018.

e. On 15 January 2019, the FLARNG issued Orders Number 015-002 ordering the applicant to a period of AGR FTNG on an OTOT for a period of 1 year, effective 16 January 2019.

f. On 7 September 2019, the FLARNG issued Orders Number 250-003 ordering the applicant to a period of FTNG in an AGR status for a period of 3 years, effective 10 September 2019.

g. On 10 March 2021, the FLARNG issued Orders Number 069-001, retaining the applicant on active duty in an AGR status from 12 April 2021 – 9 September 2022.

h. On 12 July 2022, the FLARNG issued Orders Number 193-003 retaining the applicant on active duty in an AGR status for a period of 1 year, 10 months, and 1 day, effective 10 September 2022.

i. On 30 April 2024, the applicant elected to extend his enlistment in the ARNG by 4 years.

j. On 30 May 2024, the FLARNG issued Orders Number 151-003 retaining the applicant on active duty in an AGR status, effective 11 July 2024, for a period of 4 years.

k. On 16 August 2024, the applicant was notified that REB would be terminated with recoupment, effective 15 June 2019, due to his transfer into a non-incentive eligible unit; final payment amount (\$2,291.67).

4. The applicant provides the following a:

a. Memorandum – Subject: Incentive Claims Packet, dated 17 January 2024, reflective of the applicant being advised that he is eligible for payment of his REB in the amount of \$7,5000 effective 11 July 2018. The applicant became AGR on 1 October 2018 and therefore his entitlement to future payments was terminated. The State Incentives Office is unable to process the applicant's bonus, therefore a request for processing through the Defense Finance Accounting Services is required.

b. DD Form 827 dated 8 February 2024, reflective of the applicant's submitted request for payment of \$7,500.00 REB.

c. GIMS information, reflective of the applicant's REB bonus payment of \$7,500.00 being placed on hold.

5. On 13 September 2024, the National Guard Bureau, Chief, Special Actions Branch provided an advisory opinion recommending partial approval of the applicant's request noting that per his 2018 REB addendum, he is eligible for prorated bonus payment from 11 July 2018 to 30 September 2018 which would amount to \$416.67. In accordance with National Guard Regulation (NGR) 600-7 (Selected Reserve Incentive Program (SRIP)) and the Fiscal Year 2018 SRIP the total contracted amount (\$15,000.00) will be divided by the total months of contract (72 months) and the applicant will be paid for the months of contract completed before termination. In this case, the applicant completed 2 months of the contract before beginning AGR orders resulting in a prorated amount of \$416.67 due.

6. On 26 September 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 4 November 2024, 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 partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the National Guard Bureau (NGB), Chief, Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation for partial approval finding per the applicant's 2018 REB addendum, he is eligible for prorated bonus payment from 11 July 2018 to 30 September 2018 which would amount to \$416.67. The Board found the applicant completed 2 months of the contract before beginning AGR orders resulting

in a prorated amount of \$416.67 due. The Board agreed, based on the advising official there is sufficient evidence to grant partial relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
█	█	█	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show the applicant is entitled to payment of 2018 Reenlistment Bonus (REB) in a prorated amount of \$416.67.

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to entitlement to payment of 2018 Reenlistment Bonus (REB) (first installment \$7,500.00).

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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. Department of Defense Instruction (DoDI) 1304.31 (Enlisted Bonus Program) provides that the Secretaries of the Military Departments may pay a bonus under the Enlisted Bonus Program (in accordance with Title 37, USC, section 331) to persons or members, as appropriate, to support recruiting and retention efforts in designated military skills, career fields, units, or grades, or to meet some other condition or conditions of service imposed by the Secretary of the Military Department concerned. To be eligible the member signs an agreement with the Secretary of the Military Department concerned to serve on active duty or in an active status for a specified period, in a designated military specialty or skill, career field, unit, or grade, successfully completes training and becomes qualified in a designated skill or career field, if completion of such training and technical qualification forms the basis for which the bonus is paid.
3. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) Chapter 10 (Selected Reserve Incentive Program), Chapter 10-8 (Termination of Incentives) provides that incentive eligibility will be terminated when a service member accepts an AGR position, a permanent military technician position, or a temporary military technician position of more than 179 days, where membership in the Selected Reserve is a condition of employment. That member will not be eligible to receive any further incentive payments, except for service performed before the termination date. Once declared ineligible, termination of an incentive will not affect a Soldier's responsibility to serve his or her current statutory or contractual service commitment. Commanders will not recoup funds previously paid when a service member accepts an AGR position, a permanent military technician position, or temporary military technician position of more than 179 days, where membership in the Selected Reserve is a condition of employment. These Soldiers will have their enlistment, reenlistment, and/or affiliation bonus terminated without recoupment as long as they serve one or more days in the losing Selected Reserve.
4. NGR 600-7 (Selected Reserve Incentives Programs) provides Army National Guard policies, procedures, and implementation of Selected Reserve Incentive Programs. This regulation sets responsibilities, lists benefits, describes eligibility criteria and entitlement, sets suspension, termination, and recoupment requirements, and prescribes processing and payment procedures. Chapter 3 (SRIP – Reenlistment/Extension Bonus) provides that termination without recoupment will occur when a service member accepts an AGR

position on Title 10 or Title 32 effective to the date of entry on AGR status. Soldier must have served at least 6 months of the incentive contract following the date of bonus payment eligibility. If the soldier has served at least six months of the incentive contract following the date of bonus payment eligibility, termination will be without recoupment. Termination with recoupment will occur when a service member accepts an AGR position on Title 10 or Title 32 effective to the date of entry on AGR status. Soldier has served less than six months of the incentive contract following the date of bonus payment eligibility; termination will be with recoupment. Paragraph 3-11 (Settlement of Accounts) provides that to calculate reenlistment or extension bonus recoupment or balance due as follows: Multiply the number of months served satisfactorily during the term for which the incentive was authorized by the proportionate monthly dollar amount (The proportionate monthly dollar amount will be determined by dividing the total authorized reenlistment or extension bonus amount by 36 months for a 3-year bonus or 72 months for a 6-year bonus.). Subtract that amount from the total bonus paid to the soldier to date (initial plus any later payments). If the calculation indicates overpayment to the soldier, that amount will be recouped.

5. Title 31, USC, section 3702, is the 6-year barring statute for payment of claims by the government. In essence, if an individual brings a claim against the government for monetary relief, the barring statute says that the government is only obligated to pay the individual 6 years from the date of approval of the claim. 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//