

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240003595

APPLICANT REQUESTS:

- to receive a prorated portion of his Prior Service Enlistment Bonus (PSEB) contracted on 4 March 2015
- personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 4 March 2015
- National Guard Bureau (NGB) Form 600-7-6-R-E (Annex X to DD Form 4 - PSEB Addendum - Army National Guard (ARNG) of the United States), 4 March 2015
- NGB Form 22 (Report of Separation and Record of Service), 3 March 2021
- NGB Form 55 (Honorable Discharge Certificate), 3 March 2021
- Order Number 0001062590.00, 16 March 2021
- FedEx shipment documents, 1 December 2023
- Memorandum for [Applicant] - Subject: Notification of Incentive Discrepancy and Exception to Policy (ETP) Process
- Memorandum for Record (MFR) - Subject: Termination of Incentive for Consecutive APFT [Army Physical Fitness Test] Failures
- Termination and Barring Act Checklist
- Memorandum for MNP-EDU - Subject: Response to Notification of Discrepancy for Incentives, 14 December 2023
- MFR - Subject: Advisory Opinion - [Applicant] Unpaid Bonus, 8 February 2024
- Applicant's APFT History
- Army Board for Correction of Military Records Application Options document

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 he requests the unpaid payment of his PSEB for the period of 3 March 2015 [4 March 2015] to 31 May 2016.

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

a. Having prior enlisted service in the U.S. Marine Corps, DD Form 4 shows he enlisted in the New York ARNG (NYARNG) for 6 years on 4 March 2015. In connection with his enlistment, NGB Form 600-7-6-R-E shows in:

(1) Section III (Bonus Amount and Payments), the applicant enlisted for 6 years and would receive a PSEB (Tier Level 1-5) in the total amount of \$15,000.00 less taxes in Military Occupational Specialty (MOS) 91L (Construction Equipment Repairer). Payment schedule was one of the following based upon his enlistment status. Enlisting Non-Duty Military Occupational Specialty Qualified (DMOSQ) for 6 years - Installment 1 is 50 percent processed within 180 days after becoming DMOSQ and validated in the Guard Incentive Management System (GIMS); Installment 2 is the final 50 percent processed within 180 days after the 4th anniversary.

(2) Section VI (Termination), the applicant would be terminated from incentive eligibility with recoupment for having two consecutive record APFT failures within this contract term. The effective date of termination is the date of the second "Record" APFT failure.

b. On 27 May 2015, the Office of the Adjutant General, Joint Force Headquarters, Latham, NY, published Orders Number 147-1048, which awarded the applicant Primary MOS 11B (Infantryman), effective 4 March 2015.

c. On 28 September 2016, DA Form 1059 (Service School Academic Evaluation Report) shows the applicant achieved course standards and completed the Construction Equipment Repairer course for MOS 91L1O.

d. On 21 November 2016, the Office of the Adjutant General, Joint Force Headquarters, Latham, NY, published Orders Number 326-1021, which awarded the applicant Primary MOS 91L1O and Secondary MOS 11B1O, effective 28 September 2016.

e. On 3 March 2021, NGB Form 22 shows the applicant was honorably discharged from the ARNG. He completed 6 years net service this period.

4. In support of his case the applicant provides:

a. NGB Form 55 dated 3 March 2021, showing he received an honorable discharge.

b. Order Number 0001062590.00 dated 16 March 2021, published by the NYARNG, which separated the applicant from the ARNG, effective 3 March 2021.

c. FedEx shipment documents showing a package was delivered to the applicant on 1 December 2023.

d. Memorandum for [Applicant] - Subject: Notification of Incentive Discrepancy and ETP Process, which shows the NYARNG Incentives Manager notified him that a discrepancy had been discovered with his bonus contract that must be resolved to avoid eligibility termination. The Incentives Manager (IM) had taken all measures possible prior to notification; however, the NYARNG IM could not resolve the issue without the applicant's assistance. It was determined the applicant may be eligible for an ETP to receive a tentative payment of \$5,833.33.

e. MFR - Subject: Termination of Incentive for Consecutive APFT Failures, wherein, the NYARNG Deputy G1 informed the applicant that the enlisted incentive contract listed on the enclosed Notice of Discrepancy was being terminated due to him failing consecutive APFTs. Failing consecutive APFTs is an explicit termination criteria of the applicant's incentive contract. Based on the NYARNG records, the applicant's incentive must be terminated with a final payment in the amount listed on the attached notice. Based on the date of termination (second failure date), calculations have determined that the applicant was eligible for receipt of a payment of his bonus in the amount listed on the attached Notice of Discrepancy.

f. Termination and Barring Act Checklist which informed the applicant to review Notice of Discrepancy and APFT Record sheet order to see his termination date. He was also informed to review the Soldier Response Memo and make appropriate selection, the Barring Act memo, and Summary of Events.

g. Memorandum for MNP-EDU - Subject: Response to Notification of Discrepancy for Incentives, 14 December 2023, which shows the applicant acknowledged the validity of the termination action and did not dispute the reason for discrepancy. His incentive would be terminated immediately upon receipt of the response. Any remaining monies due to him would be paid out and any monies owed to the government would be recouped.

h. MFR - Subject: Advisory Opinion - [Applicant] Unpaid Bonus, 8 February 2024, wherein, the NYARNG Deputy G1 stated, the NYARNG Directorate of Military Personnel fully supports payment of an unpaid incentive for the applicant. The applicant did successfully serve his suspension period and had a qualifying period of service from 3 March 2015 to 31 May 2016. GIMS generated a payment of \$5,833.33 due to the applicant for this period of service. Request favorable consideration of this action in favor of the applicant.

i. Applicant's APFT History document, which shows the applicant's APFT dates, scores, and results.

5. On 9 October 2024, the NGB, Chief, Special Actions Branch, provided an advisory opinion for this case and recommended approval. The advisory official stated:

a. The applicant enlisted in the NYARNG on 4 March 2015 with a \$15,000.00 bonus. His bonus addendum follows the Selected Reserve Incentive Programs (SRIP) guidance for Fiscal Year 2014. The applicant did not receive any payments for this bonus. He is requesting a prorated payment for 3 March 2015 to 31 May 2016 as he failed his second APFT on 31 May 2016 terminating eligibility for continued receipt of bonus.

b. After review of the applicant's submission and records, it was determined that the applicant signed a six-year prior service contract with a DMOSQ bonus of \$15,000.00 as a 91L. NYARNG Deputy G1 states the applicant's eligibility was terminated by his second APFT failure 31 May 2016 and it was an oversight that the applicant did not receive a prorated payment. Soldier is eligible for a portion of his reenlistment bonus from 3 March 2015 to 31 May 2016.

c. It is the recommendation of this office [NGB] that the applicant is approved. He is eligible to receive a prorated portion of his reenlistment bonus on his 2015 contract with the termination date being 31 May 2016, the day he attained his second APFT failure in accordance with his bonus addendum and SRIP guidance for Fiscal Year 2014.

6. On 10 October 2024, the applicant was provided with a copy of the NGB advisory opinion for comments or rebuttal. He did not respond.

#### 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 enlisted in the NYARNG on 4 March 2015 with a \$15,000 bonus. His bonus addendum was in compliance with the FY2014 SRIP. The applicant did not receive any payments for this bonus. He is requesting a prorated payment for 4 March 2015 to 31 May 2016 as he failed his second APFT on 31 May 2016 terminating his eligibility for continued receipt of bonus. According to the State ARNG, the applicant's eligibility was terminated by his second APFT failure on 31 May 2016 and it

was an oversight that the applicant did not receive a prorated payment. Also, according to the State ARNG, he is eligible for a portion of his reenlistment bonus from 4 March 2015 to 31 May 2016. The Board did not agree with the NGB advisory opinion. The applicant enlisted for DMOSQ for 6 years. Installment 1 at 50% to be processed within 180 days of reporting to unit and Installment 2 is the final 50% processed within 180 days after the 4th anniversary. If DMOSQ, then 50% of \$15000 = \$7500 pre-tax, which would have been before the second failed APFT. The applicant became MOSQ in MOS 91L10 Construction Equipment Repairer on 28 Sept 2016. This is after the date in that he failed his 2nd AFPT. Based on being DMOSQ after the second failed AFPT, the Board determined he was not entitled to any portion of the bonus based on the verbiage in the contract.

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. Title 31 USC, section 3702, also known as the barring act, prohibits the payment of a claim against the Government unless the claim has been received by the Comptroller General within 6 years after the claim accrues. Among the important public policy considerations behind statutes of limitations, including the 6-year limitation for filing claims contained in this section of Title 31, USC, is relieving the government of the need to retain, access, and review old records for the purpose of settling stale claims, which are often difficult to prove or disprove.
3. Department of Defense Instruction 1205.21 (Reserve Component Incentive Programs Procedures), in effect at the time, requires each recipient of an incentive to sign a written agreement stating the member has been advised of, and understands the conditions under which continued entitlement to unpaid incentive amounts shall be terminated and which advance payments may be recouped. The agreement must clearly specify the terms of the Reserve Service commitment that authorizes the payment of the incentive to the member.
4. National Guard Regulation 600-7 (Selected Reserve Incentive Programs (SRIP)) governs policies and procedures for the administration of the ARNG SRIP programs.
  - a. Paragraph 1-24 (Termination of incentives) states, incentive eligibility and entitlement will stop when any of the termination reasons listed in paragraphs 1-25 and 1-26 or the applicable program chapters and sections apply. The Soldier will not be eligible to receive any further incentive payments, except for Service performed before the termination date. Termination of an incentive will not affect a Soldier's responsibility to serve their current statutory or contractual Service commitment. The unit commander or authorized unit representative will initiate termination procedures and inform the State Incentive Manager when a Soldier is not in compliance with the incentive terms and conditions.
  - b. Section II (Prior Service Enlistment Bonus), paragraph 2-6 (Entitlement) states, entitlement for incentive begins on the date the oath of enlistment is rendered. The unit Commander must ensure that Soldiers are counseled when they enlist, acknowledging that they will not immediately receive payments under this program. Payments will be processed through personnel pay channels upon verification of all contractual

documentation and meeting the terms and conditions outlined in the incentive agreement.

5. National Guard Bureau Memorandum – The Army National Guard SRIP Policy for Fiscal Year 2014, effective 2 June 2014, Policy number 14-01 prescribes eligibility criteria, procedures, and standards for administering the ARNG SRIP for Fiscal Year 2014.

a. Paragraph 21 (Termination of Incentives) states, entitlement to incentive(s) will be terminated when any of the termination reasons in reference 1.k. (Army Regulation (AR) 601-210, Active and Reserve Components Enlistment Program) apply before the fulfillment of the service described in the Soldier's written addendum/agreement. The Soldier shall not be eligible to receive further incentive payment(s), except for payment(s) for service performed before the termination date.

b. Paragraph 22 (Termination with Recoupment) states, the Soldier shall not be eligible to receive any further incentive payment(s), except for payment(s) for service performed before the termination date. Unless granted relief, as covered in paragraph 26 (Exceptions to Policy) below, the Soldier may refund a prorated amount to the government if such termination is for failing two consecutive record APFTs within the contractual term. The effective date of termination is the date of the second consecutive for-record APFT failure. Note: This rule applies to contracts issued after 1 March 2009. (Note: Soldiers with incentives requiring recoupment will have detailed remarks entered into the Guard Incentive Management System outlining the reasons for termination with recoupment and will have all supporting documents uploaded).

6. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, the regulation states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. Paragraph 2-11 states that 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.

//NOTHING FOLLOWS//