

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240003639

APPLICANT REQUESTS: in effect –

- correction of his DD Form 214 ending 23 January 1992 to show he was released from active duty by reason of voluntary incentive program vice "locally imposed bar to reenlistment"
- payment of appropriate separation pay
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Applicant's statement
- DA Form 4126-R (Bar to Reenlistment Certificate), 13 March 1991
- All Army Activities (ALARACT) Message Number 119/91 – Subject: Voluntary Incentive Programs to Support Army Drawdown, 20 December 1991
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 January 1992
- Defense Finance and Accounting Service (DFAS) Denver Center letter, 31 January 2001
- DFAS-DE Form 0-642 (Statement of Military Leave Account), 1 October 1991 to 23 January 1992
- DFAS-DE Form 0-641 (Statement of Military Pay Account)
- Bonus Recoupment worksheet
- Internal Revenue Service (IRS) refund status results, 31 December 2010
- DFAS Indianapolis (DFAS-IN) letter, 26 August 2011
- DFAS-IN letter, 15 December 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:

a. He is submitting a request to have his records corrected. Please allow him to explain. In 1990, he reenlisted in the Army and was given a reenlistment bonus. In 1991, he was issued a bar to reenlistment (see attached file labeled Document A). In 1991, the Army issued a Voluntary Incentive Program (see attached file labeled Document B) that he qualified for according to his company commander at the time. He had a current bar to reenlistment, and he was eligible to qualify for the drawdown separation pay. He began his out-processing at Fort Benning, GA, and was at his final finance appointment when he was told he was not going to receive his separation pay yet because he would need to repay his reenlistment bonus first. He asked if the bonus could be recouped from the separation pay and he was told it was not possible. He needed to repay the reenlistment bonus and then he would receive the separation pay. The amount needed was more than \$4,000.00. He did not have that much money at the time, and he was told to finish out-processing and he would be given other options to repay that first.

b. He moved back to his hometown [REDACTED] and never received any word on how to repay this debt. He moved back to [REDACTED] in 1999 and filed his taxes. He was told his taxes would be withheld to repay a federal debt. His tax preparer had him contact the IRS. He spoke to them and was told this was for a debt to the Army, his reenlistment bonus. He filed paperwork to have his account re-examined and it was determined that the debt was valid (see attachment file labeled Document C). After 10 years of having his taxes withheld to satisfy this debt, the debt was paid off with his taxes for the year ending 2010.

c. In August of 2011, he requested a review of the debt and was sent a letter (see attachment file labeled Document D). The letter verified the debt was paid in full and he was no longer indebted for his reenlistment bonus. The letter stated for him to submit a DD Form 149 to have his records reviewed at that time. He sent paperwork via U.S. Mail, but never received a response. He had a heart attack in 2012 and other health issues since then. He has tried several times to get help from the Department of Veterans Affairs and other agencies about having this separation pay sent to him. He has contacted DFAS in Indianapolis on several occasions also. Most recently, he was told he could submit a case online and this made it easier to track the progress of his requests. They closed his case and mailed him a letter again stating to submit the DD Form 149.

d. He is attempting again to submit all his appropriate documents to have his DD Form 214 and other files updated so he can be issued his separation pay now that his debt to the Army was fulfilled. Please contact him if there is anything else he needs to submit along with these documents. He has tried several times to get this resolved over the years and he is hoping this time he gets it right.

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

a. On 13 September 1984, he enlisted in the Regular Army. The applicant completed training and was awarded Military Occupational Specialty (MOS) 55R (Ammunition Stock Control and Accounting Specialist). He reenlisted on 21 April 1987.

b. On 3 February 1988, Headquarters, 2d Infantry Division published Orders Number 32-237, which promoted the applicant to the rank/grade of sergeant/E-5, effective 3 February 1988, with a date of rank of 14 January 1988.

c. On 13 September 1990, DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States) shows the applicant reenlisted for 6 years for a Selective Reenlistment Bonus (SRB) in MOS 55R, and he elected 50 percent payment of the SRB. In connection with his reenlistment, DA Form 4789 (Statement of Entitlement to SRB) shows the applicant agreed to complete the 6 years of service. He acknowledged that he was advised and understood that if he did not complete the full period of service, he would not get any more installments of the bonus and would have to pay back as much of the bonus he had already received for the unexpired part of the period of obligated service.

d. On 7 January 1991, the applicant accepted Non-Judicial Punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice for:

- disobeying a lawful order that his check cashing privileges were suspended for a period of 6 months on 11 October 1990, and he disobeyed the lawful order by wrongfully writing and cashing a check at the Camp Hialeah club system for \$150.00 on 18 October 1991
- he also made and uttered checks in words and figures on 12, 14 and 18 October 1990, for the purpose of cash and dishonorably failed to maintain the funds in the Fort Benning Credit Union Bank for payment of checks.
- his punishment consisted of extra duty for 14 days and forfeiture of \$280.00 for a period of one month (suspended). He did not appeal.

e. On 13 March 1991, DA Form 4126-R shows a Bar to Reenlistment was initiated against the applicant based on receiving NJP (failure to obey a lawful order and writing dishonored checks), delinquent accounts, late payments, indebtedness, and failing to pay dishonored checks. He elected not to submit statements in his own behalf and his chain of command recommended he be barred from reenlistment on 14 March 1991. The approval authority approved the Bar to Reenlistment on 2 April 1991, and the applicant elected not to appeal.

f. On 5 December 1991, DA Form 4187 (Personnel Action) shows the applicant requested separation under the provision of Army Regulation (AR) 635-200 (Personnel

Separations – Enlisted Personnel), Chapter 16-5(b), Selected Change Service Obligation, Early Separation of Personnel Denied Reenlistment. The applicant had a Bar to Reenlistment approved on 2 April 1991, and he did not feel that he could overcome it. He elected to request immediate discharge. He understood that if his request for separation before his normal expiration term of service was approved, it would be for his own convenience. If he was separated, he understood that recoupment of unearned portions of SRB was required, and once separated he would not be permitted to reenlist at a later date.

g. On 10 January 1992, the approval authority approved the applicant's separation under the provisions of paragraph 16-5(b), AR 635-200, and directed he be issued an honorable discharge, and he would not be transferred to the Individual Ready Reserve.

h. On 23 January 1992, the applicant was honorably discharged by reason of locally imposed bar to reenlistment. DD Form 214 shows in:

- Item 4a (Grade, Rate or Rank) – Specialist Four (SP4)
- Item 12c (Net Active Service This Period) – 7 years, 4 months, and 11 days
- Item 12h (Effective Date of Pay Grade) – 23 April 1991
- Item 23 (Type of Separation) – Discharge
- Item 24 (Character of Service) – Honorable
- Item 25 (Separation Authority) – AR 635-200, Paragraph 16-5b
- Item 26 (Separation Code) – KGF [failed to meet the minimum qualifications for retention]
- Item 28 (Narrative Reason for Separation) – Locally Imposed Bar to Reenlistment

i. The applicant's military service records did not contain an approved request for Special Separation Benefit (SSB) nor Voluntary Separation Incentive (VSI), and he did not provide a copy of an approved request.

4. In support of his case the applicant provides:

a. ALARACT Message Number 119/91 dated 20 December 1991, which states, in pertinent part, to be eligible for these incentives in Fiscal Year 1992 the Soldier must enter into a written agreement to accept an appointment, enlistment, or transfer to the Ready Reserve. Eligible Soldiers who voluntarily separate and who are offered these incentives may apply for SSB or VSI.

b. DFAS Denver Center letter to the applicant dated 31 January 2001, which states, DFAS re-examined the applicant's pay account and determined that his principal indebtedness amount of \$4,273.00 was correct. The indebtedness was caused by the applicant's failure to complete the military service time for which he was paid a Selective

Reenlistment Bonus. The recoupment was based on his Separation Designator Code KGF (Block 26 of your DD Form 214), which required the recoupment of the unearned portions of the bonus. The debt was increased by three Advance Payments that were not fully collected prior to the applicant's release from Active Duty.

c. DFAS-DE Form 0-642 covering the period of 1 October 1991 to 23 January 1992, which shows, leave earned, used, and accrued.

d. DFAS-DE Form 0-641, which shows the applicant's entitlements, periods, SRB recoupment amount, payments, and amount unpaid/overpaid.

e. Bonus Recoupment worksheet showing his SRB entitlement based on the number of years of reenlistment, less any obligated service from previous reenlistment or extension. It shows his total SRB entitlement, total recoupment, and actual recoupment amounts.

f. IRS refund status results for tax period ending 31 December 2010, which shows his refund was reduced by \$1,498.88 to pay a past due obligation.

g. DFAS-IN letter dated 26 August 2011, regarding an audit of the applicant's debt to the United States in the principal amount of \$4,273.00. The debt remained valid for the reasons explained. DFAS records indicated the debt had been paid in full. He was referred to the ABCMR regarding his Voluntary Incentive Pay.

h. DFAS-IN letter dated 15 December 2023, which states, DFAS was returning his claim for Separation Pay without action. The applicant did not provide sufficient documentation to process his claim. DFAS is not a decision-making entity and could not authorize this payment. The DD Form 214 provided did not indicate the applicant was due a separation payment. The documentation provided was not enough for DFAS to pay the applicant's request. DFAS does not have the authority to pay if they do not have documents clearly stating the applicant is due this payment.

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 of record shows the applicant had a bar to reenlistment imposed against him. The evidence also how the applicant believed he could not overcome this bar and

accordingly, he requested immediate discharge with the understanding that if his request for separation before his normal expiration term of service was approved, it would be for his own convenience and that if he was separated, he understood that recoupment of unearned portions of SRB was required, and once separated he would not be permitted to reenlist at a later date. His request was approved, and he was separated prior to fulfilling his reenlistment contract. This triggered a recoupment of his bonus and caused a debt. The indebtedness was caused by the applicant's failure to complete the military service time for which he was paid a Selective Reenlistment Bonus. The Board found no error or injustice regarding his separation processing. Additionally, there is no evidence the applicant qualified for, requested, and had approval for a request for Special Separation Benefit (SSB) or Voluntary Separation Incentive (VSI).

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.

11/18/2024
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CHAIRPERSON
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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. Army Regulation (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. 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.
4. AR 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets policies, standards, and procedures to ensure the readiness and competency of the Force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Chapter 16, paragraph 16-5 (Voluntary separation of Soldiers denied reenlistment) states, Soldiers denied reenlistment may be voluntarily separated before expiration term of service. Paragraph 16-5b (Locally imposed bars to reenlistment (AR 601-280, chapter 6) states, Soldiers who perceive that they will be unable to overcome a locally imposed bar to reenlistment may request immediate separation. The Soldier's request will be submitted on DA Form 4187 (Personnel Action).
5. ALARACT Message Number 119/91 – Subject: Voluntary Incentive Programs to Support Army Drawdown, dated 20 December 1991, states, in pertinent part, to be

eligible for these incentives in Fiscal Year 1992 the Soldier MUST enter into a written agreement to accept an appointment, enlistment, or transfer to the Ready Reserve. Eligible Soldiers who voluntarily separate and who are offered these incentives may apply for SSB or VSI.

//NOTHING FOLLOWS//