

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 5 February 2025

DOCKET NUMBER: AR20240005737

APPLICANT REQUESTS: Exception to Policy (ETP) for payment of the second half of his Reenlistment/Extension Bonus (REB) in the amount of \$7,500.00 contracted on 21 February 2018.

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), 21 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 or the United States (ARNG)), 21 February 2018
- Orders Number 157-1003, 6 June 2019
- Indiana ARNG (INARNG) Memorandum - Subject: Notification of Incentive Discrepancy and ETP Process, 7 March 2023
- Applicant's Memorandum for Record (MFR), 9 May 2023
- NGB Memorandum - Subject: ETP Approval, Relief from Recoupment for [Applicant], 27 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:

a. The error in question is regarding the wrongful termination of the second half of his REB for not being Duty Military Occupational Specialty Qualified (DMOSQ) for 91D (Tactical Power Generation Specialist) within the specified timeframe of two years. In his defense, the change to the slot arrangement, happened during which he was in SRP [Soldier Readiness Processing] for deployment. He was not able to go to school at that time. Nor was he able to reclass while he was overseas.

b. The reason he was given for termination was that he failed to become DMOSQ within 24-months plus periods of deployment if he was NON-DMOSQ due to being cross-leveled for deployment. The 24-month period begins on the deployment Release from Active Duty (REFRAD) date, or he fails to become DMOSQ with 24-months plus periods of deployment after being moved due to unit inactivation, relocation, reorganization, or converted (for cross level deployment), or the date on his transfer order (for unit transformation or reorganization).

c. Again, in his defense, the change to the slot arrangement, happened during which time he was in SRP for deployment; therefore, he was not able to go to school at that time. However, after deployment, he could have. But before he left theater, he sustained a back injury. An injury that he is still currently being treated for four years later. He has undergone physical therapy, electrode therapy, dry needle therapy, chiropractic services, cortisone injections, back surgery (microdiscectomy), pain management (currently taking medications), and now a second surgery scheduled for the 22nd of April. All of which had a part in his current mental health conditions (anxiety, depression, stress, etc.) that resulted in him being admitted to a mental health facility. All of which he is currently being treated for as well.

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

a. He enlisted in the INARNG on 25 January 2011. The applicant completed training requirements and was awarded MOS 91H (Track Vehicle Repairer).

b. On 7 June 2016, the INARNG published Orders Number 159-1041, which awarded the applicant Primary MOS 91J (Quartermaster/Chemical Equipment Repairer), effective 25 March 2016.

c. On 11 October 2016, DA Form 4836 shows the applicant extended for 2 years.

d. On 21 February 2018, he extended again for 6 years. In connection with this extension, NGB Form 600-7-4-R-E shows, in pertinent part:

(1) The applicant reenlisted/extended as a current Soldier that was DMOSQ in his MOS. He reenlisted/extended in MOS 91J for which he was already currently MOS Qualified in for 6 years.

(2) He reenlisted/extended for the Six-Year DMOSQ REB and would receive a total amount of \$15,000.00. His incentive would be processed in two installments. The first 50 percent payment would be processed the day after his current expiration term of service upon verification of his MOS and unit of assignment qualification in the Guard Incentive Management System. The second 50 percent payment would be processed

on the fourth-year anniversary of his contract start date provided installment one (1) was previously processed.

(3) The applicant would be eligible for continued receipt of his contract under the following conditions: Note: Any transfer order stating, "Individual's Request or in accordance with (IAW) State Laws and Regulations" will not substantiate retention of this contract unless the reason for transfer is specified in the "Remarks Section." He would be eligible if:

(a) His MOS was changed due to unit transition, inactivation, relocation, reorganization, or conversion. He may continue to retain his contract provided he met all other eligibility criteria, became DMOSQ within 24-months plus any deployment periods, and he was not separated from the Selected Reserve (SELRES).

(b) He was mobilized for deployment; he would be eligible to retain this incentive regardless of duty position and Unit Identification Code (UIC)/MOS cross-leveled into during mobilization. After mobilization, he could remain in the deployed (cross-leveled) MOS or must return to his original contracted UIC/MOS within 180-days from his REFRAD date. Note: if electing to remain in a cross-leveled MOS for which he was not qualified, he must become DMOSQ within 24 months of REFRAD date plus future deployment periods.

(4) The applicant may be terminated from eligibility with recoupment for failing to become DMOSQ within 24-months plus periods of deployment if he was Non-DMOSQ due to being cross-leveled for deployment. The 24-month period begins on the deployment REFRAD date, or he failed to become DMOSQ within 24-months plus periods of deployment after being moved due to unit inactivation, relocation, reorganization, or converted (for cross level deployment) or the date on his transfer order (for unit transformation or reorganization).

(5) The applicant may be terminated from his incentive eligibility without recoupment for any of the following reasons: (Note: He must still serve the balance of the term of service entered into contractually or by statutory requirements)

(a) He was involuntarily ordered into retirement. The effective date of termination is his ARNG discharge date.

(b) He was discharged due to injury or illness that occurred or was detected while assigned in a traditional drilling status that was not the result of his own misconduct. The effective date of termination is his ARNG discharge date upon confirmation with the State Surgeon of reason for medical discharge.

(c) If he was medically separated due to a combat related disability, all outstanding payment(s) will be processed directly to his pay account upon confirmation by the State Incentive Manager.

e. On 6 June 2019, the INARNG published Orders Number 157-1003, which reassigned the applicant to Duty Position: Tactical Power Generator Specialist, MOS: 91D2O, and Paragraph-Line: 608-11, effective 6 June 2019. The additional instructions state "NA Service Member (SM) position lost due to reorg; SM has been reassigned due to REORG."

f. On 11 September 2019, the INARNG published Orders Number 17-254-0124, which ordered the applicant to active duty for 400 days in support of Operation Inherent Resolve, with a report date on 17 October 2019.

g. On 28 November 2020, he was honorably released from active duty and was transferred to his INARNG unit. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 1 year, 1 month, and 12 days net active service this period. In pertinent part, it shows in item 11 (Primary Specialty) 91J2O and item 18 (Remarks) Service in Kuwait from 14 December 2019 to 3 October 2020.

h. On 27 October 2023, the NGB, Chief, G1 Operations Division approved the ETP request on behalf of the applicant to terminate the REB without recoupment. The NGB official stated, the applicant was unable to become qualified within 24 months of the contracted MOS due to a medical condition. Therefore, the Indiana State Incentive Manager will terminate the remaining REB in the amount of \$7,500.00. A copy of this memorandum must be placed in the applicant's Army Military Human Resources Record.

i. On 31 May 2024, an Informal Physical Evaluation Board (PEB) found the applicant physically unfit and recommended a disability rating of 60 percent, and that his disposition be permanent disability retirement. DA Form 199 (Informal PEB Proceedings) shows he concurred and waived a formal hearing of his case. The following medical conditions were determined to be unfitting:

- Lumbar spine degenerative disc disease other than intervertebral disc syndrome/lumbar spinal stenosis/lumbar spondylolisthesis/status post laminectomy
- Left lower extremity radiculopathy – Anterior crural nerve
- Right lower extremity radiculopathy – Anterior crural nerve
- Left lower extremity radiculopathy – Sciatic nerve
- Right lower extremity radiculopathy – Sciatic nerve

j. On 28 June 2024, Headquarters, U.S. Army Physical Disability Agency published Orders Number D 180-08, which retired the applicant because of permanent physical disability, effective 28 July 2024, and placed him on the retired list, effective 29 July 2024.

k. On 28 July 2024, NGB Form 22 (Report of Separation and Record of Service) shows the applicant was honorably released from the ARNG by reason of "placement on the permanent disability retired list" and was transferred to the Retired Reserve.

4. In support of his request the applicant provides:

a. INARNG Memorandum - Subject: Notification of Incentive Discrepancy and ETP Process, dated 7 March 2023, wherein, the INARNG Education Services Noncommissioned Officer, notified the applicant that, a discrepancy had been discovered with the applicant's bonus incentive contract that must be resolved to avoid eligibility termination.

(1) The information regarding the discrepancy was follows:

- Incentive Type(s): REB
- Recoupment Amount: \$6,666.67
- Reason for the Discrepancy: Failure to become MOS Qualified within 24 Months of Change

(2) Due process of law afforded the applicant the right to request an ETP. If he intended to submit an ETP, he must have submitted an ETP Request to his State Incentive Manager by email or phone within 45 days from the date the correspondence was received.

b. His MFR dated 9 May 2023, which states, he signed for a 6-year REB on 21 February 2018 for the bonus amount of \$7,500.00. He has been in a financial down spiral since March of 2023 due to the loss of his Matco Tools business. Also, his 2011 Ford F-150 is having issues and is insufficient to drive anywhere, including work or drill. He cannot afford to fix it or replace it at this time. He would like to request to be relieved of recoupment and retain his REB for the following reasons: (1) He has an Line of Duty from deployment, which dates back to August 2020, that has resulted in a back injury. This back injury is still under medical treatment. (2) He is on a temporary profile while still seeking medical treatment for his back injury.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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, G1 Operations Division advisory opinion, the Board concurred with the advising official recommendation for approval to terminate the REB without recoupment. The NGB official stated, the applicant was unable to become qualified within 24 months of the contracted MOS due to a medical condition beyond his control. The Board agreed, the applicant's honorable service, deployment history, and documented medical hardship warrant payment of the remaining REB balance.
2. The Board determined there is sufficient evidence to support the applicant's request for an Exception to Policy (ETP) for payment of the second installment of his Reenlistment/Extension Bonus (REB) in the amount of \$7,500.00, contracted on 21 February 2018. The applicant met all initial eligibility criteria for the Six-Year DMOSQ REB, having reenlisted in MOS 91J for which he was qualified. He was subsequently reassigned due to unit reorganization and mobilized for deployment in support of Operation Inherent Resolve. Upon his return, he was unable to regain DMOSQ status within the required 24-month window due to a medically documented back injury sustained during deployment. The applicant's condition was later confirmed by an Informal Physical Evaluation Board, which found him physically unfit and recommended permanent disability retirement with a 60 percent rating.
3. The Board noted, the applicant was honorably retired and placed on the permanent disability retired list effective 29 July 2024. In light of these circumstances, the Board agreed that the applicant's inability to meet the DMOSQ requirement was due to factors beyond his control and did not warrant termination of the REB. Therefore, the Board granted relief by approving the ETP and authorizing payment of the second half of the REB in the amount of \$7,500.00.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show the applicant has an approved exception to policy authorizing payment of the second half of the REB in the amount of \$7,500.00, contracted on 21 February 2018.

X //SIGNED//

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. 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.

3. National Guard Regulation 600-7 (Selected Reserve Incentive Program (SRIP)) governs policies and procedures for the administration of the ARNG SRIP programs.

a. Paragraph 1-19 (Personnel movement between ARNG units) provides that, ARNG Soldiers involuntarily transferred due to unit transition, will be governed by the following: (1) Those that contracted for an incentive should be transferred into positions coded for their current critical skill MOS, bonus unit, paragraph and line (para/line) or one within allowable substitution rules per current Fiscal Year SRIP policy. (2) Only if the above provision cannot be accomplished will a Soldier be allowed to transfer into another MOS, unit or para/line vacancy (with the exception of Table of Distribution and Allowances units). (3) Soldiers who are transferred into a MOS where they are not qualified will have 24 months to become qualified and be awarded the MOS for their position or incentives will be terminated without recoupment.

b. Paragraph 1-21 (Continued receipt of incentives) states, a Soldier may be eligible for continued receipt of incentive(s) when the following conditions apply: (1) Involuntary transfer between Army Reserve Component is due to unit transition per this regulation. (2) Transfer at the convenience of the government and authorized by the Chief NGB. Soldier must become MOS qualified in the new skill within 24 months of transfer or incentives will be terminated 24 months after date of transfer. (3) Mobilized Soldiers will be allowed to retain the current incentives which they had qualified to receive whether or not they are qualified in any position and position assigned to fill during mobilization. Following mobilization, the Soldier must either return to the original contracted incentive MOS and position or choose to remain in the mobilized MOS. Soldiers who choose to remain to the originally contracted incentive MOS must be reassigned to the MOS and position for which the incentive was authorized within 180 days of REFRAD. Soldiers who choose to remain in the MOS in which mobilized must become duty MOS qualified within the established time constraints in effect per the Fiscal Year (FY) SRIP policy in effect at contract signature date.

c. Paragraph 1-25 (Termination with recoupment of incentives) states, the conditions under which termination with recoupment of incentives is warranted are prescribed in this paragraph and the applicable program chapters and sections of this regulation. Termination with recoupment is defined as termination of the incentive which 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. Termination with recoupment will occur if a Soldier —

(1) Fails to become Duty Area of Concentration (AOC)Q/DMOSQ in the AOC/MOS for which contracted per the incentive addendum/agreement and within legally prescribed timelines. Termination is effective on the contract start date.

(2) Separates from a SELRES unit of the ARNG for any reason. Separation includes but is not limited to discharges or transfers to the Inactive National Guard (ING) or Retired Reserve. Termination date is the effective date on the transfer order to the ING or Individual Ready Reserve.

(3) Medically discharged as a result of their own misconduct, regardless of whether they are assigned to a designated combat zone or combat-related operation. The termination date is the ARNG discharge date.

(4) Discharged from the ARNG for any reason unless otherwise noted in this regulation or in the current ARNG SRIP policy. Termination effective date is the ARNG discharge date.

d. Paragraph 1-26 (Termination without recoupment) states, the conditions under which termination without recoupment of incentives is warranted are prescribed in this paragraph and the applicable program chapters and sections of this regulation. The effective date of the termination will be the effective date of the action. Payments due prior to the effective date will be paid to the Soldier. Payments due after the effective date of the action will be canceled and will not be paid to the Soldier.

(1) Involuntarily ordered to retire. Termination effective date is date of discharge.

(2) Discharged due to injury or illness that occurred or was detected while assigned in a Troop Program Unit status. Reason for medical discharge must not be a result of Soldier's own misconduct. Termination effective date is ARNG date of discharge.

e. Paragraph 2-14 (Entitlement) states, entitlement to a Reenlistment/Extension Bonus for an immediate reenlistment or extension begins on the date after expiration term of service. The unit commander must ensure that Soldiers are counseled when they reenlist or extend that they will not receive payments immediately 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.

f. Paragraph 2-15 (Eligibility) states, the Soldier must contract for not less than a three or six-year term of service approved for incentive entitlement by the Director ARNG as outlined in the current FY SRIP policy. Reenlist or extend for the required term in either a critical skill or critical unit as designated by the current FY SRIP policy in effect on the date the REB addendum is approved within the ARNG incentive management system.

//NOTHING FOLLOWS//