

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240006985

APPLICANT REQUESTS:

- debt remission
- refund offset amount of \$2,921.66
- a personal appearance (video/telephonically)

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

- DD Form 149 (Application for Correction of Military Record)
- Department of Veterans Affairs (DVA) letter, 7 February 2023
- Official Form 309I (Notice of Chapter 13 Bankruptcy Case), March 2023
- Department of the Treasury letter, 28 February 2024

FACTS:

1. The applicant states in pertinent part that his contractual obligation and incentive was terminated when he was released from military service due to failing the Army Physical Fitness Test. He notes that following his release, he received a combined rating of 80 percent from the DVA. He contests that based upon this rating, he is now eligible for all benefits and the terms of service agreement reflected in his previous service contract are no longer valid. Since being released from the military, he has also filed for Chapter 13 bankruptcy (11 December 2023) and notes that continued recoupment of funds within 90 days of this filing is in violation of the bankruptcy code and the offset amount of \$2,921.66 should be refunded.

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

a. On 27 February 2017, the applicant enlisted in the Regular Army for 3 years 26 weeks with duty as a 91F (Small Arms Artillery Repairer) and entitlement to a \$10,000.00 seasonal bonus with the initial payment being disbursed upon completion of the contractual 91F training and arrival at his first duty station. The remaining payments would be processed in equal anniversary payments across the remainder of his enlistment contract. The applicant understood that if he failed to complete his initial term of service in the incentivized Military Occupational Specialty (MOS) in which he was

contracted due to his own misconduct, performance or reasons other than the needs of the Department of the Army, resulting in failure to attain the bonus MOS, his bonus eligibility would be terminated and any unearned amount received would be subject to recoupment.

b. On 9 June 2017, the U.S. Army Combined Arms Support Command issued Orders Number 160-00366 announcing the applicant's award of the 91F MOS, effective 21 August 2017.

c. On 7 March 2018, the applicant was flagged for noncompliance with the Army Body Composition Program.

d. On or about 26 October 2018, the applicant was notified by his commander that separation action under the provisions of Army Regulation (AR) 635-200 (Active Duty Enlisted Administrative Separations), Chapter 18 (Failure to Meet Weight Control Standards) was being initiated. The applicant was advised and elected to waive his right to consult with legal counsel. His Battalion Commander reviewed his separation packet and directed that he be separated from the Army prior to reaching his expiration term service date.

e. On 8 November 2018, the Installation Management Command issued Orders Number 312-0005 reassigning the applicant to the transition point pending separation processing.

f. On 16 November 2018, the applicant was honorably discharged from military service in accordance with AR 635-200, Chapter 18.

3. The applicant provides the following a:

a. DVA letter dated 7 February 2023, reflective of a summary of the applicant's service benefits currently being provided by the DVA. The applicant is currently receiving \$2,372.15 per month in compensation.

b. Official Form 309I dated March 2023, reflective of information pertaining to the applicant's filing of Chapter 13 bankruptcy on 5 December 2023. Section 8 provides that government agencies must provide proof of claim no later than 3 June 2024.

c. Department of the Treasury letter dated 28 February 2024, reflective of the applicant being paid \$6,227.00 from the Internal Revenue Service of which \$2,921.66 was applied to a Federal (Defense Finance and Accounting Service) debt.

4. On 17 December 2024, the Department of the Army, Deputy Chief of Staff, G-1, Financial Management Specialist, Military Pay Branch, provided and advisory opinion

recommending disapproval of the applicant's request noting that he was paid \$6,600.00 of the \$10,000.00 enlistment bonus (less taxes) on 29 September 2017. He was initially notified of the debt on 23 January 2019. The debt was later placed in suspense on 27 March 2020 due to COVID-19. However, on 30 January 2024, the suspension was lifted, and the collections were resumed. The debt is currently paid in full.

5. On 18 December 2024, the applicant was provided with a copy of the advisory opinion and afforded 14 days to provide comments. As of 13 January 2025, the applicant has not responded.

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 facts and recommendations outlined within the G1 advisory opinion and the lack of any rebuttal of those facts submitted by the applicant, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's military record.

BOARD VOTE:

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

5/4/2025


XCHAIRPERSON


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. 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.
2. Title 37 United States Code, Section 373 (Repayment of Unearned Portion of Bonus, Incentive Pay, or Similar Benefit, and Termination of Remaining Payments, when Conditions of Payment not met) provides a member of the uniformed services who is paid a bonus, incentive pay, or similar benefit, the receipt of which is contingent upon the member's satisfaction of certain service or eligibility requirements, shall repay to the United States any unearned portion of the bonus, incentive pay, or similar benefit if the member fails to satisfy any such service or eligibility requirement, and the member may not receive any unpaid amounts of the bonus, incentive pay, or similar benefit after the member fails to satisfy such service or eligibility requirement.
3. AR 601-210 (Regular Army and Army Reserve Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the U.S. Army Reserve, and Army National Guard for enlistment.

Chapter 10 (Selected Reserve Incentive Program) provides guidance related to the enlistment bonuses.

a. Chapter 10-8 (Termination of Incentives) provides that incentive eligibility will be terminated when a service member separates from a Selected Reserve unit or the IRR of the USAR or ARNG for any reason. Separation includes discharge or transfer to the IRR, ING, Standby, or Retired Reserve.

b. Chapter 10-9 (Recoupment of Incentives) provides that members who are not granted relief through the waiver process for incentives received must refund a pro-rata amount to the Government when termination is due to reasons outlined in paragraph 10-8. The recoupment amount is based on the number of months served satisfactorily during the term for which an incentive was paid will be multiplied by the monthly rate authorized by the particular incentive. The monthly rate is calculated by dividing the total incentive amount by the number of months of service the member has agreed to serve.

4. AR 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

5. AR 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicant's 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//