

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 March 2025

DOCKET NUMBER: AR20240007310

APPLICANT REQUESTS: payment of the appropriate amount/entitlement of her remaining Reenlistment/Extension Bonus (REB) dated 23 April 2012.

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

- DD Form 149 (Application for Correction of Military Record)
- Enlistment/Reenlistment Agreement Army National Guard Service Requirements and Methods of Fulfillment, 14 April 2007, that discusses her contractual obligations during her enlistment in the Army National Guard (ARNG)
- National Guard Bureau (NGB) Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 – REB Addendum), 23 April 2012 showing that she reenlisted for the REB incentive
- NGB Form 22-5 (Addendum to DD Form 4 – Approval and Acceptance by Service Representative for Interstate Transfer in the ARNG), 26 February 2016 shows she accepted an interstate transfer (IST) to Hawaii, effective 26 February 2016
- DA Form 4856 (Developmental Counseling Form) dated 26 February 2016 that discusses her IST
- Memorandum; Subject: Approved Over Strength Authorization for Enlistment as a Staff Sergeant (SSG)/E-6, Human Resources Sergeant (42A3O), 3 February 2016, that states her enlistment into the Hawaii Army National Guard (HIARNG) was approved but was being assigned to an overstrength position
- Orders Number 063-098 issued by the Texas Army National Guard (TXARNG) on 3 March 2016 that shows she was transferred to the HIARNG, effective 26 February 2016
- Memorandum; Subject: Exception to Policy (ETP) Approval, Relief from Recoupment, REB for [Applicant], 19 January 2024 from the NGB that approves the applicant request for relief from recoupment of previous REB payment and states she is also entitled to the second REB payment of \$2,500

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 after moving from Texas to Hawaii due to her husband's medical conditions in 2016, she was put in an excess position for a few months prior to finding a valid position. With her husband's condition worsening and being unable to work, [she was] told there was an available Military Technician position. She submitted a review and was approved for remaining amount.
3. A review of the applicant's service record shows:
 - She enlisted in the TXARNG on 14 April 2007
 - She extended in the TXARNG on 23 April 2012 for a period of 6-years; in conjunction with this extension NGB Form 600-7-3-R-E showing she reenlisted for the REB incentive of \$10,000.00 for reenlisting for 6 years:
 - the first 50 percent payment being paid the day after her current expiration term of service, second 25 percent payment will be processed on the third year anniversary and the final 25 percent payment will be processed on the fifth year anniversary
 - she also understood and agreed that she was not serving in a miltech position (including indefinite and temporary assignments of 180 days or more within a 12 month period and she was extending in a valid, vacant position and not coded as excess
 - she also understood and agreed that she must be a primary position holder, not in an overstrength or excess status
 - Memorandum; Subject: Approved Over Strength Authorization for Enlistment as a SSG/E-6, Human Resources Sergeant (42A3O), dated 3 February 2016 that states her enlistment into the HIARNG was approved to enlist into a 42A3O/E-6 (Human Resources Sergeant) position which was overstrength and she could lose her bonus
 - NGB Form 22-5 dated 26 February 2016 shows she accepted an IST, effective 26 February 2016 from the TXARNG to the HIARNG
 - DA Form 4856 dated 26 February 2016 that discusses her IST and states that due to no valid and vacant positions in the HIARNG, she would be enlisting into an overstrength 42A3O position in the HIARNG and her incentives may be affected (with or without recoupment)
 - Orders Number 063-098 issued by the TXARNG on 3 March 2016 shows she was transferred to the HIARNG from the TXARNG, effective 26 February 2016, and she was in an excess position

- Memorandum; Subject: ETP Approval, Relief from Recoupment, REB for [Applicant] dated 19 January 2024 from the NGB that approves the applicant's request for relief from recoupment of previous REB payment and states she is also entitled to the second REB payment of \$2,500.00 with the establishment payment date of 14 April 2016

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 available documentation showing the applicant accepted a technician position in violation of the terms outlined in the bonus addendum, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's pay record.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:XXX	:XXX	:XXX	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.

//SIGNED//

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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, U.S. Code, 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. National Guard Bureau Memorandum – Subject: Army National Guard Selected Reserve Incentive Program (SRIP) Policy for Fiscal Year 2012, 5 June 2012 - 30 September 2012 (Policy Number 12-01, Update 1), states in pertinent part:

a. Paragraph 22 (Termination of Incentives), entitlement to incentives will be terminated when any of the termination reasons in reference 1.a. (Army Regulation 601-210 (Active and Reserve Components Enlistment Program) apply before the fulfillment of the service described in the member's written agreement. The Soldier shall not be eligible to receive further incentive payments, except for payments for service performed before the termination date. Once declared ineligible, termination of an incentive does not affect a Soldier's responsibility to continue to serve out his or her current statutory or contractual Service commitment.

b. Paragraph 23 (Termination with Recoupment), recoupment of incentives requiring resolution and consideration involving doubtful cases in which recoupment would be contrary to personnel policy, against management objectives, against equity or good conscience, or contrary to the best interest of the United States, the Army, and ARNG, are covered under paragraph 28.

c. Paragraph 24 states, detailed remarks must be entered into Information Management and Reporting Center (IMARC)/GIMS clearly outlining the reasons for termination with recoupment and supporting documents must be uploaded. Reasons for termination with recoupment include the following:

(1) A Soldier voluntarily changing their Critical Skill (CS) MOS during the contractual obligation, unless assigned as a 09S (OCS Candidate) or 09R (SMP Cadet). The termination date will be the date of transfer reflected on the Soldier's order.

(2) A Soldier who voluntarily transfers within the State or Interstate Transfer for reasons other than those covered under references 1.a., 1.h., and 1.i. will be governed by the following: A Soldier who transfers out of a CS incentive into a Non-CS position is not eligible to retain his or her incentives and will be terminated effective the date on the transfer order.

d. Paragraph 28 (Exceptions to Policy (ETP)), the Chief of the Education, Incentives, and Employment Division is the proponent for this guidance and is the authority for ETP determinations. All ETPs will be initiated by the Soldier and routed through their chain of command to the State IM and State Military Personnel Officer, to the Professional Education Center Incentives Support Team for action. Approved or denied ETPs and supporting documents must be uploaded in iPERMS and iMARC/GIMS. All supporting documents must be uploaded to the iMARC/GIMS ETP module. ETPs are evaluated on an individual basis.

3. Department of Defense Instruction 1205.21 (Reserve Component Incentive Programs Procedures) 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. Paragraph 6.8. (Termination and Recoupment) states, if entitlement to an incentive is terminated for any reason before the fulfillment of the service described in the member's written agreement, that member shall not be eligible to receive any further incentive payments, except for payments for service performed before the termination date. Unless granted relief, as covered in paragraphs 6.6. and 6.7., the member must refund a prorata amount to the Government, if such termination is for moving to a non-bonus skill or unit, unless the move is required by the Reserve component.

4. Title 31, U.S. Code, 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//