

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240007488

APPLICANT REQUESTS:

- debt remission
- a personal appearance

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

- DD Form 149 (Application for Correction of Military Record)
- National Guard Bureau (NGB) letter, 10 May 2016

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 in pertinent part that he did not receive the last two installments of his enlistment bonus and now his initial payment is being recouped because of an interstate transfer to the Pennsylvania Army National Guard (PAARNG) executed which resulted in the change of his contractual Military Occupational Specialty (MOS). He contests that at the time of his transfer, he inquired about his bonus entitlement because he was being placed into an 11C position rather than the 11B position/MOS that he contracted for. He was advised that this action was due to the needs of the Army and therefore he would be able retain his enlistment bonus. He initiated a Congressional complaint in 2016 which resulted in his ability to retain the initial payment received (without recoupment). However, he would not be entitled to the remaining two installments of the bonus.

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

- a. On 1 November 2006, the applicant enlisted in the ARNG for 8 years with duty as an 11B (Infantryman).

b. On 18 April 2007, Headquarters, U.S. Army Infantry Center issued Orders Number 108-2933 announcing award of the applicants 11B Military Occupational Specialty (MOS), effective on or about 25 May 2007.

c. On or about 9 February 2011, the applicant voluntarily transferred into the MAARNG with duty and assignment as an 11B.

d. On 15 November 2011, the applicant, as an 11B, elected to extend his current enlistment in the ARNG by 6 years with entitlement to a \$10,000.00 Reenlistment/Extension Bonus (REB) to be disbursed in three increments: 50 percent the day after reaching his current Expiration Term Service (ETS), 25 percent on the 3rd year anniversary and 25 percent on the 5th year anniversary of his extension. NGB Form 600-7-3-R-E (Annex R to DD Form 4 or DA Form 4836 REB Addendum ARNG) completed at the time of this extension provides the contractual obligation associated with this bonus. Section V (Termination) provides that the applicant's entitlement to this incentive would be terminated without recoupment if he was involuntarily separated from the ARNG as a result of unit inactivation, relocation, reorganization or a Department of Defense directed reduction in the ARNG force. Incentive would be terminated effective the date of discharge. This contract further provides that termination with recoupment would occur if the applicant voluntarily transferred within the State or interstate transferred for reasons other than those governed by Army Regulation (AR) 601-210 which include:

- being moved involuntarily; required to become MOS qualified in the new MOS within 24 months – the REB will be terminated effective the date of the transfer order
- transfer out of a critical shortage position into a non-critical shortage position – the REB will be terminated the date of the transfer order

e. On 22 July 2013, the applicant voluntarily transferred into the PAARNG with duty and assignment as an 11C (Indirect Fire infantryman).

f. On 23 July 2013, the MAARNG issued Orders Number 204-021 announcing the applicant's assignment to an 11C position with the PAARNG, effective 21 July 2013.

g. On 22 March 2014, the applicant completed 11C training.

h. On 27 March 2014, the PAARNG issued Orders Number 086-1078 announcing the applicant's award of the 11C MOS. This would now serve as the applicant's Primary MOS with 11B being his Secondary MOS.

i. On 17 January 2017, the applicant elected to extend his current enlistment in the ARNG by 1 year and 3 months.

j. On 10 September 2017, the applicant elected to extend his current enlistment in the ARNG by 3 years, 8 months, and 8 days.

k. On 28 March 2022, the applicant elected to extend his current enlistment in the ARNG by 4 years and 7 months.

4. The applicant provides a NGB letter, dated 10 May 2016, reflective of their response to his Congressional representative concerning his entitlement to a REB. The NGB advised that the applicant extended his obligation with the MAARNG on 15 November 2011, with entitlement to a \$10,000.00 REB to be paid in three installments: 50 percent processed the day after current ETS, 25 percent on the 3rd anniversary (1 November 2015) and 25 percent on the 5th anniversary (1 November 1, 2017). On 7 April 2013, the final installment was paid in the amount of 5,000.00. The second installment was not processed due to the applicant's Interstate Transfer from the MAARNG to PAARNG. The PAARNG submitted the exception to policy on 2 February 2016, which was later denied on 5 February 2016, in accordance with (IAW) Department of Defense Instruction (DODI) 1205.21 (Reserve Component Incentive Programs Procedures) wherein it provides that if the applicant's MOS is changed without the convenience of the government, or if the applicant moves from a non-bonus skill or unit, then they are subject to termination. The applicant voluntarily transferred out of the contracted MOS (11B) to the 11C MOS on 21 July 2013. Therefore, he is ineligible to receive the incentive. Due to the MOS violation, the applicant is subject to termination without recoupment effective the date of the transfer.

5. On 14 November 2024, the NGB, Chief, Special Actions Branch provided an advisory opinion recommending denial of the applicant's request noting that after review of the congressional response dated 10 May 2016 and the applicant's Guard Incentive Management System profile the incentive was terminated with an effective date of 21 July 2013. The applicant was eligible for the bonus from 1 November 2012 to 21 July 2013, the effective date of transfer. The applicant is entitled to \$1,111.12 for eight months of eligibility. He was paid \$5,000.00 in the initial payment. IAW the congressional response dated 10 May 2016 and Selected Reserve Incentive Program (SRIP) Policy Fiscal Year (FY) 2012, the applicant is not subject to full recoupment. The difference of payment and eligibility is being recouped in the amount of \$3,888.88. Therefore, it is their recommendation that his request be denied because he received 8-months of the incentive and IAW SRIP Policy FY12 and congressional response dated 10 May 2016 the incentive was subject to termination without recoupment effective the date of the transfer, 21 July 2013.

6. On 15 November 2024, the applicant was provided with a copy of the advisory opinion and afforded 15 days to provide comments. As of 8 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 available documentation, the findings and recommendations outlined in the NGB 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 relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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, 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. ARNG SRIP Policy for FY 12, 5 June 2012 - 30 September 2012, is provided to assist leadership and personnel managers in meeting and sustaining ARNG readiness requirements. The program provides recruiting and retention incentives to assist in filling critical shortages. Incentives are implemented in specific situations where other less costly methods have proven inadequate or ineffective and are used only as necessary to support unit and skill staffing requirements. Section 22 (Termination of Incentives) provides that entitlement to incentives will be terminated when any of the termination reasons in 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.

3. AR 601-210 (Active and Reserve Components Enlistment Program) governs eligibility criteria, policies, and procedures for enlistment and processing of persons into the Regular Army, the Army Reserve, and Army National Guard for enlistment on or after the effective date of this regulation. Paragraph 10-8 (Termination of Incentives) provides that incentive eligibility will be stopped when any of the termination reasons as listed below apply and that member shall not be eligible to receive any further incentive payments, except for Service performed before the termination date. Once declared ineligible, termination of an incentive will not affect a Soldier's responsibility to serve their current statutory or contractual Service commitment. Termination of eligibility to an incentive will occur, if a Soldier –

- Becomes an unsatisfactory participant
- Fails to become qualified in their Military Occupational Specialty for which they contracted for
- Voluntarily moves to a non-bonus unit or MOS
- Separates from the ARNG for any reason

a. Paragraph 10-15 (Continued Receipt of Incentives) provides that a Soldier may be eligible for continued receipt of incentives when their transfer is at the convenience of the government and authorized by the Chief, ARNG. The Soldier must become qualified in the new MOS within 24 months, or the incentive will be terminated.

b. Paragraph 10-9 (Recoupment of Incentives) provides that when relief is not granted through the waiver process from incentives received, the member must refund a pro-rata amount to the Government when termination is due to reasons outlined in paragraph 10-8, except where prorated recoupment is not authorized.

4. Title 37 USC, 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.

5. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

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. 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//