

COMMONWEALTH OF MASSACHUSETTS
VETERANS' BONUS APPEAL BOARD

2017-VB-01

IN RE: HERIK ESPINOSA

MEMORANDUM OF DECISION

The appellant, Herik Espinosa (“Espinosa”), served on active duty in the U.S. Army from November 2004 to February 2016, when he was discharged under other than honorable conditions. He subsequently applied to the Commonwealth’s Veterans’ Bonus Division (“Bonus Division”) for two Welcome Home Bonuses, one covering his combat deployment to Afghanistan (May 2011 to May 2012), and a second covering state-side service from 2014 to 2016.¹ The Bonus Division denied both bonuses in light of the Army’s unfavorable characterization of his service at the time of his discharge. He appeals, claiming that under Army and U.S. Department of Defense regulations, his service during his first two terms of enlistment was honorable and the Army’s adverse characterization only applies to his third enlistment. We disagree, and affirm the decision of the Bonus Division.

FACTS

At a hearing held on March 8, 2017, the Bonus Division and Espinosa, through counsel, submitted numerous exhibits. Espinosa also offered his own testimony, which was taken by

¹ Espinosa has only appealed the denial of the bonus stemming from his Afghanistan deployment, and has therefore waived any claim related to the denial of the 2014-2016 bonus. Even if we were to consider the issue, however, Espinosa would not be eligible for that bonus: his service during his third enlistment was indisputably not under honorable conditions, as required by chapter 130.

telephone. After careful consideration of all the evidence and the parties' submissions, the Board makes the following findings of fact:

1. Espinosa has lived in Massachusetts since November, 1999. (T. 18-19)
2. Espinosa enlisted in the U.S. Army in November 2004 and re-enlisted in 2008. He completed both of these terms of enlistment. (Ex. A) During his second enlistment, from May 2011 to May 2012, he was deployed to Afghanistan, where he served at Bagram Air Base, as well as several forward operating bases. (*Id.*; T. 23-26) He received the Army commendation medal and the Afghanistan campaign medal with two stars for this service. (Ex. A; T. 23-27)
3. Following his return from deployment, Espinosa was stationed at Fort Bragg, North Carolina. (T. 27-28) Following treatment for a cancerous tumor in his left forearm, Espinosa re-enlisted to a third term of enlistment in 2015. (T. 29-31)
4. His DD-214 reflects that the Army discharged Espinosa under other-than-honorable conditions. (Ex. A) He was reduced to the lowest enlisted grade. (*Id.*)
5. At the time of his discharge, the Army issued Espinosa a Certificate of Release or Discharge from Active Duty ("DD-214"), which on its face covers the period of service from November 9, 2004 (the date of Espinosa's first enlistment) to February 19, 2016 (the date of his discharge). (Ex. A) Espinosa submitted a copy of this form with his application to the Bonus Division, and has submitted another copy to us as part of his appeal. (*Id.*) The DD-214 reflects that his service was characterized "under other than honorable conditions." (*Id.*)

DISCUSSION

Chapter 130 of the Acts of 2005 provides that:

[T]here shall be allowed and paid out of the treasury of the commonwealth without appropriation to each person, who shall have served in the armed forces of the United States in active service as part of Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle who was discharged or

released under honorable conditions from such service, the sums specified in this section. . .

(1) \$1,000 to each such veteran who performed active service outside the continental limits of the United States in the Afghanistan or Iraq area as those areas are described by proper federal authority.

(2) \$500 to each such veteran who performed active duty within the continental limits of the United States or outside the continental limits of the United States other than in the Afghanistan or Iraq areas for a period of 6 months or more.

To receive a Welcome Home Bonus, the statute requires that a veteran² demonstrate service “under honorable conditions.” *Id.* A veteran typically establishes this fact by producing a copy of his or her DD-214. According to the U.S. Department of Defense, the DD-214 form is “the authoritative source of information required for the administration of State and Federal laws applicable to personnel who have been discharged, released, or transferred to a Reserve Component while on active duty.” Department of Defense Instruction (“DoDINST”) 1336.01, par. 3(f), *available at* <http://www.dtic.mil/whs/directives/corres/pdf/133601p.pdf>. The DD-214 is intended to be “an accurate and complete summation of active military personnel service.” *Id.* at par. 3(a).

Espinosa does not contest that his DD-214 contains an “other than honorable” characterization. Instead, he claims that characterization only applies to his third and final enlistment, not his first or second (during which he served in Afghanistan). He claims, based on the fact that he enlisted in 2004 and then re-enlisted in 2008 and 2015, that his service during his first two enlistments was honorable, notwithstanding the subsequent characterization on his DD-214. And indeed, he has submitted copies of certificates indicating honorable discharges for both

² Although not a factor in our decision, we note that under G.L. c. 4, 7, forty-third, Espinosa does not meet the definition of a “veteran” under Massachusetts statute. Subject to qualifications not relevant here, a “veteran” must be a person “whose last discharge or release from his wartime service . . . was under honorable conditions.”

of those enlistments. *See* Ex. F-G. In support of this argument, Espinosa points to Army regulations which provide that when a soldier ends one term of enlistment and re-enlists to a subsequent term, the service administratively provides an honorable discharge from the first term of enlistment immediately before re-enlisting the soldier to a subsequent term of service. *See* DoDINST 1332.14 at Encl. 3, § 2(a)(4); Army Reg. 635-200 at par. 16-3. In sum, the appellant argues that these documents and regulations establish his eligibility for a Welcome Home bonus for his Afghanistan deployment.

In a separate appeal which we also decide today, *In re Machado*, 2017-VB-002 (2017), we rejected this argument. We concluded in *Machado*, as we do here, that the military's characterization of service shown on the DD-214 applies to whatever period of service is printed in the "Record of Service" section, and that it supersedes prior characterizations made by the military during that covered period, including re-enlistments. This conclusion is compelled by a logical reading of the DD-214 itself, which contains details of Espinosa's entire active service, including earned awards and deployments from his first two enlistments. Ex. A. The plain language of military regulations provides further support. *See* DoDINST 1332.14 at Encl. 4, par. 3 (military's characterization of service applies to either "the current enlistment or period of service to which the separation pertains") (emphasis added); *see also* Army Reg. 635-200, para. 1-1. In Espinosa's case, the "period of service to which the separation pertains" is clearly listed in the "Record of Service" section of the appellant's DD-214 form, *i.e.*, November 9, 2004 to February 19, 2016. Consequently, it is clear that the Army characterized Espinosa's active duty service—a period which includes his Afghanistan deployment—as "other than honorable."³ He

³ Our conclusion is notwithstanding the first sentence in the "Remarks" section of Espinosa's DD-214, which reads: "Continuous Honorable Active Service: [November 9, 2004 to February 19, 2016]." This phrase is required to be included by 32 C.F.R. § 45.3(d)(10) and DoDINST

therefore does not meet the character-of-service requirement for a bonus for any service falling within those dates.

At the hearing before the Board, Espinosa offered several documents from his military file, three letters of recommendation, and his own testimony, in support of his claim that his service during the first two enlistments was honorable. We have carefully reviewed these submissions, but they do not alter our conclusion, discussed above, that where a DD-214 is available for a period of service, the characterization of that service is dispositive for purposes of Bonus Division decisions.

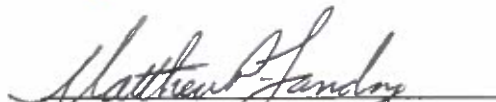
The decision of the Bonus Division is **AFFIRMED**. If Espinosa wishes to appeal this decision, he may file a complaint in the Superior Court for the county in which he lives, or in Suffolk County, within thirty (30) days of receiving this decision. *See* G.L. c. 30A, § 14.

VETERANS' BONUS APPEAL BOARD

By:


ANTHONY SCIARAFFA
Adjutant General's Designee


GREGORY M. POLIN
Treasurer's Designee


MATTHEW P. LANDRY
Attorney General's Designee

Dated: May 30, 2017

1336.01, par. 3(j) on any DD-214 in which the service-member is being separated with any characterization other than "honorable."