

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 March 2024

DOCKET NUMBER: AR20230001109

APPLICANT REQUESTS: in effect, remission of Senior Reserve Officers' Training Corps (ROTC) debt incurred as the result of an incomplete Guaranteed Reserve Forces Duty (GRFD) Scholarship Cadet Contract agreement in the amount of \$62,283.00.

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

- DD Form 149 (Application for Correction of Military Record), 11 October 2022
- Counsel statement, undated
- DD Form 4 (Enlistment/Reenlistment Document - Armed Forces of the United States), 15 December 2016
- CC Form 203-R (Guaranteed Reserve Forces Duty - Scholarship Cadet Contract Endorsement), 28 August 2017
- DA Form 4824-R (Addendum to Certificate and Acknowledgement of Service Requirements), undated, unsigned
- Memorandum for Record, Assistant Professor of Military Science, (University), 23 September 2019
- Email, (University) Supervisor Student Financial Services, 2 October 2019
- Letter, Registrar, (University), 8 October 2019
- Memorandum, Professor of Military Science, (University), Notification and Rights, 18 October 2019, Notification of Disenrollment from ROTC Due Process and Appellate Rights of Scholarship (Applicant)
- Memorandum, Acknowledgement of Election or Rights, (Applicant), 23 October 2019
- Memorandum, Approval Authority, Headquarters, U.S. Army Cadet Command and Fort Knox, 19 December 2019, Disenrollment from the U.S. Army ROTC Program
- Election of Payment Plan Rights
- Discharge Orders 164-0001, 12 June 2020
- Email chain (Applicant), 5 February 2020 to 11 February 2020
- Defense Finance Accounting Services (DFAS) letter, 11 January 2022
- DFAS, Account Statement, 11 February 2022
- Medical Progress Notes, 8 June 2022

FACTS:

1. The applicant states, through counsel:

a. The applicant received a letter from the Assistant Professor of Science, ROTC, on 23 September 2019 notifying her of a breach of her ROTC contract because she did not attend class or physical training since 26 August 2019.

b. The Supervisor, Student Financial Services, confirmed that she did not register for the fall 2019 semester. Her disenrollment was confirmed by the University Registrar on 8 October 2019.

c. On 19 December 2019, the applicant was formally disenrolled from ROTC. She was given the option to pay back the amount of her scholarship funds in total or to initiate a payment plan.

d. Her parents attempted to contact the applicant's cadet command to discuss her disenrollment from ROTC and to lessen her debt and to discuss her request to enter active duty.

e. In the following months, the applicant began the process to enter the active duty Army. She was medically evaluated and it was determined she had a medical condition affecting her colon and that she had an anorexic diet.

f. On 28 February 2021, a medical provider evaluated her and found she did not have any chronic issues that would preclude her from serving in the Army.

g. On 12 June 2020, she received notice that she was discharged from the U.S. Army Reserve. As a result, she incurred a debt of \$62,283.00 with a monthly payment of \$1,783.95.

h. In this case, the applicant has been the victim of a material error of fact regarding her fitness to serve in the Army. The applicant was informally told she was disqualified from Army service following her medical examination in February 2020. The applicant sought a second opinion that cleared her for Army service. The applicant's primary care physician drafted a memorandum to the Army explaining that the applicant did not suffer from an eating disorder, but this document was disregarded for some unknown reason.

i. The applicant voluntarily disenrolled from the ROTC Program because she no longer had the desire to serve as an officer, but she still wanted to serve her country as an enlisted member. This option was improperly denied her by the Army. The applicant demonstrated her willingness to fulfill her ROTC contract by serving in the Army, but this option was improperly denied her by the Army.

j. The applicant has been a victim of a material injustice. When the applicant was first considering pursuing an enlisted career in the Army, she spoke with cadre personnel for advice. This individual told the applicant that the easiest way to disenroll from the ROTC program was to disenroll from college entirely. Furthermore, the applicant was told that she could easily transition to the active duty Army as an enlisted Soldier to fulfill her contractual obligations. With this advice, the applicant withdrew from university with the intent of enlisting in the Army. Unfortunately, the applicant was given bad advice from the cadre personnel. If the applicant had known that she would not be able to seamlessly transition to the enlisted Army, she would not have disenrolled from the university. Once it became apparent that she received bad advice, the applicant and her mother repeatedly attempted to arrange a phone conference with the commanding officer but these attempts were to no avail.

k. The applicant has been unjustly prejudiced because of the DFAS debt and will continue to be unduly burdened because of the stifling amount of debt she now finds herself in. She is currently employed as an information technology specialist at a hospital. The applicant is currently unable to live on her own, so she shares her residence with two roommates. The applicant's DFAS debt has created a tremendous financial and psychological burden on her and will continue to unjustly impact her quality of life unless this debt is waived or lessened by this Board.

2. The applicant and counsel provided copies of:

a. DA Form 4824-R, which reflects the applicant initialed she understood all her rights under the ROTC/Simultaneous Membership Program (SMP).

b. A memorandum for record from the assistant professor of military science, dated 23 September 2019, noting the applicant had not participated in Army ROTC class, physical training, or field training since 26 August 2019 at the beginning of the Fall 2019 semester.

c. An email from the University Registrar, dated 8 October 2019, confirming the applicant was no longer enrolled as a student at the university.

d. A memorandum from the Professor of Military Science, dated 18 October 2019, notifying her he was initiating her disenrollment from the ROTC under the provisions of Army Regulation 145-1 (Senior Reserve Officer Training Corps Program), paragraph 3-43a(16), due to her failure to register at (University) for the Fall 2019 classes, which constituted a breach of the Senior ROTC (SROTC) contract. The professor of military science notified her of her due-process and appellate rights, consisting of, in part:

(1) She was entitled to and may request a hearing and if she requested a hearing, the appointing authority would appoint a board of officers to hear her case. She

may present matters regarding her disenrollment indebtedness. If she failed to appear, such absence would be considered constructive, irrevocable, clear, and voluntary waiver of her right to appear at the board.

(2) She may consult with any reasonably available military officer or duly licensed civilian counsel at no expense to the Government to decide whether or not to waive a hearing and otherwise assist her in exercising her rights. At the hearing she may submit written statements in her own behalf and present witnesses whose testimony would assist in reaching an accurate conclusion regarding whether or not she should be disenrolled.

(3) Her rights included, but were not limited to: a hearing; a personal appearance; presentation of matters in mitigation, extenuation, and justification in the form of personal statements, information, documents, and witnesses; objection to her disenrollment; objection to the establishment of indebtedness to the U.S. Government; objection to recoupment of any established indebtedness to the U.S. Government; request for forgiveness of the obligation to recoup any such indebtedness; object to the method of recoupment; and appeal any and all decisions made regarding her rights, of which she retained the right to appeal to the ABCMR.

(4) If a scholarship cadet, she may be called to enlisted active duty (AD) as an enlisted Soldier to repay any bonus, incentives and/or scholarship benefits in the amount of \$62,258.00 in lieu of a call to AD in fulfillment of her contractual obligation.

e. An acknowledgement and election of rights memorandum completed by the applicant, dated 23 October 2019, in which she acknowledged, in part, it was her responsibility to understand without any reservation, her rights and obligations, as well as to fully understand the nature, the process and the consequences of the proceedings, as outlined in the notification memorandum.

f. A memorandum issued by the Commanding General, Headquarters, U.S. Army Cadet Command and Fort Knox, dated 19 December 2019, officially disenrolling and discharging her from the ROTC Program under the provisions of Army Regulation 145-1, paragraph 3-43a(16). The ROTC Program separation approval authority further notified her that since she was a member of the U.S. Army Reserve under the SMP, she would be released to her unit to fulfill the remainder of her military service obligation. In addition, any obligation to the Army must be satisfied by repaying the cost of advanced education assistance provided by the Army in the amount of \$62,258.00. She was further advised she could elect options to pay the total amount owed in lump sum or elect a repayment plan.

g. A partial election of appellant rights response memorandum in which she elected, in part, to appeal her disenrollment and her indebtedness through all U.S. Army

agencies above the U.S. Army Cadet Command. She requested an expedited call to active duty which would take place within 30 days.

h. Email correspondence between the applicant and her command dated between 5 February 2020 to 11 February 2020, showing her and her parent's attempts to lessen or relieve the debt in full.

i. A letter from DFAS, Debt and Claims Department, with a statement, dated 11 February 2022, showing she was assessed debt of \$62,283.00 with a 2.00% interest rate and an installment amount of \$1,783.95. She was given an option to make payment in full within 30 days or to pay the debt in installments with interest accrued.

j. Medical progress notes, dated 8 February 2020.

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

a. On 8 December 2016, in connection with an enlistment in the U.S. Army Reserve (USAR), she gave a report of medical history, noting she was in good health (DA Form 2807-1 (Report of Medical History)).

b. On 15 December 2016, she enlisted in the USAR for a period of 8 years beginning at grade/pay grade E-1 with a 6 year obligation in the Reserve Component (RC).

c. On 28 August 2017, she completed a GRFD Scholarship Cadet Contract Agreement (CC Form 203-R), in which she agreed to enter the SROTC Program and will participate in the SMP; she would complete the ROTC requirements, complete a baccalaureate degree program, and commission. She agreed, in part, she may not revoke the GRFD endorsement and apply for accession into AD, or any other AD education delay program. Upon completion of the SROTC Program, and receipt of a baccalaureate degree, she would be commissioned in the USAR for assignment in the USAR unit and then be obligated to serve an initial period of AD training and perform the remainder of her service obligation in the Reserve Component.

d. On the same date, she completed a SROTC Scholarship Cadet Contract (DA Form 597-3) in which she understood and agreed that in consideration for a 4-year pay period of academic years, she would receive full tuition fees, a flat rate yearly amount of \$1,200.00 for books and laboratory expenses, and pay and allowances of \$300.00, \$350.00, and \$450.00 for Military Science (MS) I Cadet, MS II Cadet, and MS III Cadet respectively, in part:

(1) She agreed to remain a full-time student in good standing at the educational institution until she received her degree.

(2) She agreed to accept an appointment, if offered, as a commissioned officer in the USAR in accordance with governing Army regulations.

(3) She would serve a short period of AD or AD training if appointed for duty in a Reserve Component.

(4) She understood and agreed that once she became obligated and was disenrolled from the ROTC Program for breach of contractual terms or any other disenrollment criteria established by Army Regulation 145-1, she was subject to:

(a) Serve on enlisted active duty if she was qualified, for a period of not more than 4 years if she failed to complete the ROTC Program.

(b) Agreed to reimburse the U.S. Government if she was offered the opportunity to repay her advanced educational expenses in lieu of being ordered to AD; in the amount of money, plus interest, equal to the entire amount of financial assistance (to include tuition, educational fees, books, laboratory expenses, and supplies).

(c) Agreed that pending discharge from ROTC, she may not enlist.

(d) Agreed that any obligation to reimburse will not be altered by subsequent enlisted duty. She was required to repay her advanced educational assistance under the terms of the contract and her subsequent enlistment in an Armed Service would not relieve her from her repayment obligation.

e. On 25 April 2018, she was ordered to active duty for training and completed training between 10 June 2018 and 11 July 2018 (32 days).

f. DA Form 4187 (Personal Action) shows on 16 April 2020, she was promoted to private 2/E-2.

g. On 12 June 2020, the Commander, U.S. Army Recruiting Battalion, Harrisburg, PA, issued Orders 164-0001, which show she was discharged her from the USAR under the provisions of Army Regulation 135-178 with uncharacterized service.

5. An Army Review Boards Agency Medical Advisor reviewed this case and determined there are no medical issues related to her disenrollment from ROTC.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.
2. The Board found the applicant's scholarship contract clearly stated the consequences of disenrollment from ROTC, primarily the requirement to repay the funds expended on her education. The Board further found no evidence of violations of her due process rights prior to the final decision to disenroll her. The Board noted that cadets facing disenrollment do not have a right to serve on active duty in lieu of repayment of the debt they will incur. That determination is made by the approval authority, and in this case, the approval authority determined the applicant would not be ordered to active duty. Based on a preponderance of the evidence, the Board determined the debt the applicant incurred as a result of her disenrollment from ROTC is not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

6/27/2024

X

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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
2. Army Regulation 145-1 (Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training) in effect at the time, prescribed policies and general procedures for administering the Army's Senior Reserve Officers' Training Corps (SROTC) Program. The Commanding General, U.S Army Reserve Officers' Training Corps Cadet Command (CG, ROTCCC) will provide detailed procedures for the day-to-day operation of the Reserve Officers' Training Corps (ROTC) Program.
 - a. Paragraph 3-43a(16) provided disenrollment for Breach of contract (including formerly used term willful evasion). (Note: Breach is defined as any act, performance or nonperformance on the part of a student that breaches the terms of the contract regardless of whether the act, performance or nonperformance was done with specific intent to breach the contract or whether the student knew that the act, performance or nonperformance breaches the contract).
 - b. Paragraph 3-44. Discharge and separation from the United States Army Reserve. The CG, ROTCCC, is the only authority for discharge of scholarship cadets.
3. Army Regulation 135-178 () sets policies, standards, and procedures to ensure the readiness and competency of the U.S. Army while providing for the orderly

administrative separation of Army National Guard of the United States (ARNGUS) and USAR enlisted Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance. The separation policies in this regulation promote the readiness of the Army by providing an orderly means to (1) Judge the suitability of persons to serve in the Army on the basis of their conduct and their ability to meet required standards of duty performance and discipline. (2) Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service. (3) Achieve authorized force levels and grade distribution. (4) Provide for the orderly administrative separation of enlisted Soldiers in a variety of circumstances.

a. Chapter 5-6. Separation of cadets on disenrollment from the Senior Reserve Officers' Training Corps or an Reserve Officers' Training Corps Scholarship Program.

(1) Disenrollment. ROTC cadets enrolled in the SROTC Advanced Course or an ROTC Scholarship Program are as-signed members of (control group ROTC) of the IRR.

(2) The disposition of a cadet who is disenrolled from the ROTC Program is prescribed by AR 145–1, chapter 3, section VI, and AR 135–91, paragraph 3–12.

b. Disposition. The separation authority may order that a cadet be discharged from the USAR citing this paragraph as the authority.

c. Characterization of service. The service of cadets discharged or retained under the provisions of this paragraph will be described as uncharacterized.

4. Title 10, USC, chapter 61, provides the Secretaries of the Military Departments with authority to retire or discharge a member if they find the member unfit to perform military duties because of physical disability. The U.S. Army Physical Disability Agency is responsible for administering the Army physical disability evaluation system and executes Secretary of the Army decision-making authority as directed by Congress in chapter 61 and in accordance with DOD Directive 1332.18 and AR 635-40 (Physical Evaluation for Retention, Retirement, or Separation).

a. Soldiers are referred to the disability system when they no longer meet medical retention standards in accordance with Army Regulation 40-501 (Standards of Medical Fitness), chapter 3, as evidenced in an MEB; when they receive a permanent medical profile rating of 3 or 4 in any factor and are referred by an MOS Medical Retention Board; and/or they are command-referred for a fitness-for-duty medical examination.

b. The disability evaluation assessment process involves two distinct stages: the MEB and PEB. The purpose of the MEB is to determine whether the service member's

injury or illness is severe enough to compromise his/her ability to return to full duty based on the job specialty designation of the branch of service. A PEB is an administrative body possessing the authority to determine whether or not a service member is fit for duty. A designation of "unfit for duty" is required before an individual can be separated from the military because of an injury or medical condition. Service members who are determined to be unfit for duty due to disability either are separated from the military or are permanently retired, depending on the severity of the disability and length of military service. Individuals who are "separated" receive a one-time severance payment, while veterans who retire based upon disability receive monthly military retired pay and have access to all other benefits afforded to military retirees.

c. The mere presence of a medical impairment does not in and of itself justify a finding of unfitness. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the Soldier may reasonably be expected to perform because of his or her office, grade, rank, or rating. Reasonable performance of the preponderance of duties will invariably result in a finding of fitness for continued duty. A Soldier is physically unfit when a medical impairment prevents reasonable performance of the duties required of the Soldier's office, grade, rank, or rating.

5. Section 1556 of Title 10, United States Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//