

IN THE CASE OF: [REDACTED]

BOARD DATE: 16 November 2023

DOCKET NUMBER: AR20230002098

APPLICANT REQUESTS: termination/remission of his Reserve Officers' Training Corps (ROTC) scholarship debt based on his enlistment in the U.S. Navy.

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

- DD Form 149 (Application for Correction of Military Record)
- U.S. Navy Leave and Earnings Statement, 1 to 31 October 2022
- U.S. Navy Statement of Service
- DD Form 4 (Enlistment/Reenlistment Document, 27 April 2006)
- DD Form 1966 (Record of Military Processing), 27 April 2006

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 he requests termination of education debt due to 16+ years of current and active military service. He is currently serving and has served on active duty in the United States Navy since 2006 and is currently an E-7. His date of enlistment was 28 June 2006. His current command is the Naval Special Warfare Development Group in [REDACTED]. After his time in the Army, he was informed that 2+ years of active service in any branch would act as a repayment of his education loan. This is also stated on DFAS's (Defense Finance and Accounting Service) website.
3. Review of the applicant's service records shows:
 - a. The applicant signed a DA 597-3 (Army Senior ROTC Scholarship Cadet Contract) on 1 December 2004. He agreed to receive scholarship benefits for a period of two (2) academic years, including tuition and fees, books, laboratory expenses, and monthly subsistence, at [REDACTED] in exchange for appointment as a Reserve of the Army upon successful completion of all academic, military, and other requirements of the Army ROTC program.

b. Paragraph 5 (Terms of Disenrollment) of his DA Form 597-3 states that if the cadet were disenrolled from the ROTC program for any reason the Secretary of the Army could order the cadet to reimburse the United States the dollar amount plus interest that bears the same ratio to the total cost of the scholarship financial assistance provided by the United States to the cadet as the unserved portion of active duty bears to the total period of active service the cadet agreed to serve or was ordered to serve.

c. Paragraph 6 (Enlisted Active Duty Service Obligation) of his DA Form 597-3 states that if he were called to active duty for breach of contract under the provisions of paragraph 5, he would be ordered to active duty for 2 years if the breach occurred during Military Science (MS) II; 3 years if the breach occurred during MS III; or for 4 years if the breach occurred during MS IV.

d. On 24 May 2005, he enlisted in the [REDACTED] Army National Guard ([REDACTED] ARNG) for 8 years. He also signed a Simultaneous Membership Program (SMP) Agreement with the ARNG.

e. On 28 July 2005, the applicant's Professor of Military Science (PMS) notified him by memorandum of the initiation of disenrollment action from the ROTC and placement on leave of absence, under the provisions of Army Regulation (AR) 145-1, Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training; paragraph 3-43(a)(10) due to his dismissal from the Leader Development and Assessment Course 2005 for failing to meet the minimum requirements. He was also advised of his right to request a hearing and also notified that he retained the status of cadet until disenrollment and discharge action were complete and as such may not enlist in any other military service or component or sign any other scholarship contract. He was further informed that as a scholarship cadet he could be called to active duty in an enlisted rank/grade of private (PV1)/E-1 or required to repay scholarship benefits in the amount of \$12,826 in lieu of a call to active duty.

f. On 21 November 2005, the Commanding General, U.S. Army Cadet Command, notified him by memorandum of disenrollment action from the ROTC under the provisions of AR 145-1, paragraph 3-43(a)(10) due to his dismissal from the Leader Development and Assessment Course 2005 for failing to meet the minimum requirements. He was also informed that in addition to being released to his ARNG unit, when the ROTC scholarship contract is breached, any obligation to the Army must be satisfied by repaying the cost of advanced educational assistance provided by the Army. The total amount of money spent in support of your educational assistance is \$12,826.00. A U.S. Army Advanced Education Financial Assistance Record. (DA Form 5315-E) detailing the debt is enclosed. He must make an election of the authorized options described and return his election to the Commander, U.S. Army Cadet Command. He was further informed that as a scholarship cadet he could be called to

active duty in an enlisted rank/grade of private (PV1)/E-1 or required to repay scholarship benefits in the amount of \$12,826 in lieu of a call to active duty.

g. Also on 21 November 2005, the U.S. Army Cadet Command Deputy Chief of Staff, G-1, informed the applicant's Professor of Military Science that the applicant was now disenrolled from the ROTC program due to his dismissal from the Leader Development and Assessment Course 2005 after failing to meet minimum requirements. Since he was a member of the ARNG Simultaneous Membership Program (SMP), he would be released to his ARNG unit. A debt has been established with DFAS in the cadet's name.

h. The applicant was provided an addendum to his scholarship contractual agreement with options to be ordered to active duty, repayment of the debt in a lump sum, or repayment in monthly installments. His election is not available for review.

i. On 22 November 2005, Joint Force Headquarters, ■■■ ARNG published Orders 326-536 ordering his discharge from the ARNG effective 1 August 2005 with an uncharacterized discharge in accordance with ARNG regulations. His NGB Form 22 (Report of Separation and Record of Service) shows he completed 2 months and 8 days of ARNG service.

j. On 30 December 2005, Headquarters, U.S. Army Cadet Command, forward a DD Form 139 (Pay Adjustment Authorization) for the applicant's debt in the amount of \$12,286.

4. On 27 April 2006, the applicant enlisted in the U.S. Navy Reserve for 8 years under the Delayed Entry Program. His DD Form 4 and DD Form 1966 show he enlisted in the pay grade of E-3 and enlisted for an enlistment bonus in the amount of \$40,000.

5. He provides a signed statement from the Naval Warfare Development Group, dated 31 November 2022, that certifies the applicant has been serving on active duty in the United States Navy. His Active Duty Service Date is 28 June 2006 with an End of Active Obligated Service Date of 6 June 2025. It is certified that while serving on active duty there have been no periods of "LOST TIME." It is also certified that member's Projected Rotation Date is June 2025. Member is eligible for reenlistment or extension of his active duty as long as there is nothing in his record that would affect his eligibility. At this time there is nothing that would prevent the member from reenlisting.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, a majority of the Board found relief is warranted.

2. A majority of the Board found the applicant's service in the U.S. Navy served the same purpose as a call to active duty to satisfy his ROTC scholarship debt. A majority of the Board determined the record should be corrected to show his ROTC scholarship debt has been resolved by his active duty service in the U.S. Navy.

3. The member in the minority noted that, while the applicant's U.S. Navy service could be considered to have satisfied his ROTC scholarship debt, the fact that the applicant received a significant enlistment incentive (\$40,000) when he entered the U.S. Navy must be taken into consideration in this case. To then say that his U.S. Navy service also satisfies his ROTC scholarship debt would be granting him an undeserved windfall. Based on a preponderance of the evidence, the member in the minority determined the applicant's ROTC scholarship debt 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 Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected to show his active duty service in the U.S. Navy has satisfied his ROTC scholarship debt.

2/16/2024

X █

CHAIRPERSON

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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. (Optional as applicable.) 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. Army Regulation 145-1 Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training; prescribes policies and general procedures for administering the Army's Senior ROTC Program.

a. Paragraph 3-31 states the Army ROTC Scholarship Program provides financial assistance to those students who have demonstrated academic excellence and leadership potential. The U.S. Army Scholarship Program's purpose is to provide for the education and training of highly qualified and motivated young men and women who have a strong commitment to military service as commissioned officers.

b. Paragraph 3-39 states a non-scholarship cadet may be disenrolled by the PMS and a scholarship cadet may be disenrolled only by the Commanding General (CG), ROTC Cadet Command. Nonscholarship and scholarship cadets will be disenrolled for a variety of reasons.

c. Paragraph 3-43(a)(10) states a cadet may be disenrolled for being dismissed from advanced camp, receiving a recommendation not to receive credit for advanced camp or withdrawal from advanced camp for reasons other than breach of contract. If breach of contract is involved, (see (16) below).

d. Paragraph 3-43a(16) 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).

3. Army Regulation 37-104-3 (Financial Administration – Military Pay and Allowances Policy) provides the policies and provisions for entitlements and collections of pay and allowances of military personnel. Chapter 59, currently in effect, provides for recoupment of educational expenses, e.g., ROTC, U.S. Military Academy, and advanced civilian schooling under a previous agreement when obligated active duty service has not been completed.

//NOTHING FOLLOWS//