

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 23 April 2024

DOCKET NUMBER: AR20230003878

APPLICANT REQUESTS: remission of debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal argument
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the U.S.), 18 October 2017
- Drug Testing Program Testing Register, 24 November 2019
- DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract), 18 October 2017
- Memorandum – Subject: Disenrollment of Scholarship Cadet, 18 February 2021
- Memorandum – Subject: Disenrollment Board, 29 July 2020
- Memorandum – Subject: Rebuttal of Non-Concurrence Memorandum, 9 March 2021
- Memorandum – Subject: Letter of Good Character Judgment, 24 April 2020
- Memorandum – Subject: Character Reference, 11 July 2020
- Character Reference letter, 18 July 2020
- Self-authored letter (Mr. D_ D_), 24 July 2020
- Memorandum – Subject: Sworn Formal Statement, 16 July 2020
- Legal letter – Subject: Hearing in Case, 24 July 2020
- Memorandum – Subject: Determination Board, 22 July 2020
- Memorandum – Subject: Notification of Disenrollment from the ROTC – Due Process and Appellate Rights of Scholarship/Nonscholarship, 2 June 2020
- SROTC Contract Agreement – Special Active-Duty Provision – Statement of Understanding, 11 June 2020
- Memorandum – Subject: Notification of Respondent to a Board of Officers/Investigating Officer, 15 June 2020
- Memorandum – Subject: Appointment of a Formal Board of Officers/Investigating Officer (IO) to Determine Suitability for Retention in the Army ROTC Program and Amount and Validity of Scholarship Debt, 12 June 2020

- Memorandum – Subject: Notification of University Representative – Determination of Suitability for Retention in the Army, 15 June 2020
- DA Form 4856 (Developmental Counseling Form), 14 February 2020
- DA Form 705 (Army Physical Fitness Test Scorecard)
- Email information
- DA Form 5315-E (U.S. Army Advanced Education Financial Assistance Record)
- Memorandum – Subject: Disenrollment Board, 29 June 2020
- Cadet Security Clearance
- Postal Service information

FACTS:

1. The applicant, represented by legal counsel, provides that his ROTC debt is not valid because upon his separation from the U.S. Army, his obligations also ceased as of the receipt of his Notice of Disenrollment (18 February 2021). The applicant notes that this notification indicated that his disenrollment was due to a breach in contract for testing positive for cocaine during a urinalysis. The applicant argues that it is important to note that he never knowingly used drugs and his ingestion of cocaine in this instance was inadvertent and unintentional. The circumstances surrounding the alleged use is further provided in their entirety within the supporting documents for the Boards review.

a. Counsel notes that the reason for this appeal is the fact that the Disenrollment Board convened prior to the recommendation provided by the Headquarters, Fourth Brigade Commander wherein he elected to not require the applicant to repay the ROTC scholarship, thereby theoretically absolving the applicant from recoupment responsibility as of 29 July 2020, despite the final decision rendered by the command. Counsel further provides a chronological account of the applicant's accomplishments both prior to enrolling in the ROTC program as well as following his dismissal.

b. The applicant continued with his college education ultimately graduating from the University of Richmond. He is not wealthy enough nor in such a position to afford repayment of the \$164,110.00 debt incurred. Finally, counsel provides that if the Board will not accept the compassionate reasons to cancel the applicant's debt, then the Board should consider the following legal and equitable reasons in support of his debt cancellation. First, the ROTC debt should be canceled because of the contractual impossibility resulting after the Army made it impossible for the applicant to complete his service obligations.

c. Second, the ROTC debt should be canceled because of procedural missteps including the Cadet Command Commander's final decision to affirm the Fourth Brigade Commander's endorsement to disregard the Disenrollment Board's recommendation which was discounted in error and implicates doctrine of laches. Third, the ROTC debt

should be canceled because this Board has ultimate discretion enabling it to do so and it is the right thing to do under the circumstances.

d. Counsel presents that it was impossible for the applicant to fulfill his contractual obligation after he was involuntarily disenrolled from the ROTC program and required to repay all monies previously received in accordance with his scholarship and made him ineligible to serve in the Reserve Component effective 18 February 2021. Counsel argues that the applicant was never consulted or asked whether he preferred disenrollment and keeping his service obligation intact over repayment (recoupment) of the scholarship money so that he could continue to fulfill his ROTC requirements. In fact, he was told that enlistment in lieu of scholarship repayment was not an option. In the end, he was at the mercy of the decision maker's whim requiring him to repay the scholarship and lose eligibility for enlistment, destroying his lifelong goal to serve in the Army. He was left without any viable options to affirmatively fulfill his contractual obligations, thereby rendering it an impossible contract.

e. Counsel notes that the entire recoupment process has been woefully deficient because of the improper final decision deviating from the Disenrollment Board's recommendation. The hearing officer at the board is the only official, other than cadre at the University of Richmond, to not only know the applicant but to evaluate all of the evidence in his case. Generally, when such hearings are held, a basic tenant of such military hearings is that the reviewing officials may do no worse than what the hearing officer recommends. In this case, they did much worse. In his non-concurrence memorandum dated 18 February 2021, upon which the Cadet Command bases its decision, the Fourth Brigade Commander objects to the Disenrollment Board's recommendation, contending that the applicant did not provide any evidence to corroborate his accidental ingestion story. Counsel argues that in accordance with (IAW) U.S. Army Cadet Command (USACC) Pamphlet 145-4 (Enrollment, Retention, and Disenrollment Criteria Policy and Procedures) paragraph 8-5, boards will be conducted IAW Army Regulation (AR) 15-6 (Procedures for Administrative Investigations and Boards of Officers), Chapter 7. Chapter 7 acknowledges that that an AR 15-6 investigation is an administrative action, and the rules of evidence are only informed by this publication. Chapter 8 provides further that under AR 15-6 "findings must be supported by a greater weight of evidence than supports a contrary conclusion." That is, findings should be based on evidence, which, after considering all evidence presented points to a particular conclusion as being more credible and probable than any other conclusion. In contention counsel notes that after the Disenrollment Board convened post-hearing, it was recommended that the applicant should not be disenrolled, barred from enlistment nor be required to repay the scholarship debt because it was concluded that he did not knowingly or intentionally ingest cocaine despite the positive urinalysis result. This argument is further provided in its entirety within the supporting documents for the Board's review.

f. Regarding laches in doctrine, counsel argues that approximately 7 months after the Disenrollment Board's recommendation was handed down in favor of the applicant, the USACC Commander reversed the recommendation, and this comes a total of 15 months after the incident in question. It has now been more than 2.5 years since this situation started. Why the USACC and the Command waited until February 2022 has been left unexplained. At this time, the applicant had entered into his second semester of his senior year and was still in limbo and at the mercy of this unnecessarily protracted process. Because his stipend had been paused and his future on hold, he paid for his own coursework during this time, continuing to take military science courses of his own. Waiting seven months to hand down an adverse final decision was unduly harmful to the applicant who was already operating under the assumption that the Disenrollment Board's recommendation would be upheld and finalized as is customary and required by regulation. Thus, he continued status quo except without the financial support he had grown accustomed to under the ROTC scholarship expecting to serve the Army post-graduation as a commissioned officer. He proceeded to take military science courses and held off exploring any other career prospects during his crucial final college semesters due to his enlistment plans, which he had no reason to believe were destined for derailment. This argument is further provided in its entirety within the supporting documents for the Board's review.

g. Another procedural misstep committed by the Command when conducting this investigation is that the urinalysis results, a kind of personally identifiable information, were inadvertently distributed to another cadet, sharing with this other cadet his personal and private information. This was an embarrassing mistake the Command failed to recant or even acknowledge. By sharing his personal information with another cadet, the applicant's privacy rights were violated, particularly because the results were detrimental to his reputation.

h. Lastly, counsel argues the use of regulatory discretion. The applicant is not ineligible for the ROTC program if his record does not indicate the offense has recurred nor is likely to recur, has good potential as an officer, and current personal conduct and character of the applicant are above reproach and that since the offense the cadet shows good citizenship. The applicant has demonstrated by way of the facts presented in this appeal and through his post-administrative disenrollment actions that he is not likely to ever commit the same mistake twice, he has great potential as an officer, and he has gone above and beyond to demonstrate his commitment to the program even though he has no formal obligations to the ROTC nor the military at this point. The applicant did not voluntarily commit any actions which would induce discharge procedures from the ROTC Program nor bar him from completing his scholarship contract commitments because he did not voluntarily ingest cocaine. The positive urinalysis resulted after he inadvertently ingested cocaine while consuming an alcoholic beverage laced with the drug, unbeknownst to him. Although there were no witnesses to present from the college party that he attended when this occurred, the applicant

submitted for the Disenrollment Board's inspection several character witnesses attesting that he was known among the community and within the ROTC program to be an upstanding contributor and student with a positive moral compass and disposition for honesty. Because of these circumstances, the applicant should not owe the repayment of the scholarship. The Army should use its fully permissible discretion to cease its or any agent of the Army's debt collection procedures and to extinguish the alleged debt. This argument is further provided in its entirety within the supporting documents for the Board's review.

2. A review of the applicant's available personnel records reflects the following:

a. On 18 October 2017, the applicant enlisted in the U.S. Army Reserve (USAR) for 8 years as an ROTC cadet. The applicant also endorsed DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) acknowledging his entitlement to full tuition fees and a monthly stipend varying between \$300.00-500.00 per month. This document provides acknowledgment by the applicant that

(1) once he became obligated and then later disenrolled from the ROTC program, he would be subject to reimburse the U.S. Government through repayment of an amount of money plus interest, equal to the entire amount of financial assistance paid by the U.S. for his advanced education from the commencement of the contractual agreement to the date of his disenrollment.

(2) if he was disenrolled from the ROTC program, the Secretary of the Army retained the prerogative to either order him to active duty or order monetary repayment of scholarship benefits. Subsequent enlistment in an Armed Service would not relieve him of his repayment obligation.

b. On or about 25 November 2019, the applicant tested positive for cocaine during a urinalysis.

c. On 2 June 2020, the applicant was notified of the initiation of his disenrollment from the ROTC program based on a fact or condition (positive urinalysis for cocaine) that barred him from appointment as a commissioned officer, resulting in security clearance being revoked after appeal process, which constitutes, either individually or collectively, a breach of the terms of his ROTC contract with the U.S. Army. As such, the applicant was placed on a leave of absence pending disenrollment. The applicant:

(1) was advised of his rights to request a hearing. Further, he was advised that he would retain the status of "cadet" until his disenrollment (and discharge, if applicable) is complete, as such, he would not be able to enlist in any other military service or component.

(2) He would not be able to use a subsequent period of military service to satisfy his ROTC indebtedness if that subsequent period of military service is not the direct result of being ordered onto active duty as a consequence of his disenrollment from ROTC.

(3) Lastly, if eligible, he could request permission to complete his current baccalaureate degree in the school in which he was enrolled before being ordered to serve on active duty following completion of his disenrollment as an enlisted Soldier. If he so chose this option, he would be ordered to enlisted active duty within sixty (60) days after he would normally complete his baccalaureate degree requirements, or after he was withdrawn/dismitted from the school/university, whichever occurs first. If a graduate student, he would be ordered to active duty when he completed the current academic school year, or upon withdrawal/dismittal from the school/university, whichever occurs first. The applicant acknowledged that recommendations of the PMS, his Brigade Commander and/or anyone else in his chain of command that are part of the disenrollment packet are not binding upon the final approval authority, who may reach a different conclusion after considering the entire enrollment packet.

d. On 11 June 2020, the applicant requested an expedited call to active duty i.e., within 30 days of his date of disenrollment.

e. On 15 June 2020, the applicant was advised that a board of officers/investigating officer had been appointed to hear evidence and to determine whether he breached the terms of his ROTC agreement and his suitability for retention in the ROTC program.

f. On 29 June 2020, the applicant elected to waive his rights to appear in person before the board and consented to a remote appearance. The Board discovered or certified that the applicant:

- accrued \$164,110.00 in Advanced Education Financial Assistance
- on 25 November 2019 he breached his ROTC contract by testing positive for cocaine during a drug
- he should not be required to repay the Army (recoupment), the indebtedness (\$164,110.00)

g. The board determined that although the applicant did not use optimal judgment when drinking alcohol from an open/shared container; the board did not believe this lapse of judgment should stop his pending commissioning. The board believes that he felt genuine remorse for his actions and will be a more vigilant leader due to this experience. Therefore, the Board recommended that the applicant be retained in the ROTC scholarship program and not be ordered to active duty as an enlisted Soldier. Furthermore, the board recommended that the applicant not be ordered to repay the Advanced Education Debt (\$164,110.00) and any form of scholarship benefits.

h. On 7 July 2021, the Commanding General, U.S. Army Cadet Command (USACC) disenrolled the applicant from the ROTC program for breach of contract under the provisions of AR 145-1 (Senior ROTC Program: Organization, Administration, and Training) with recoupment of educational benefits totaling \$164,110.00.

i. On 5 November 2021, the Commanding General, USACC, reviewed the applicant's appeal and recommended upholding the disenrollment with full recoupment in the amount of \$164,110.00.

3. On behalf of the applicant, counsel provides the following:

a. Drug Testing Program Testing Register dated 24 November 2019, reflective of a listing of personnel who participated in a urinalysis conducted on 24 November 2019.

b. Memorandum – Subject: Disenrollment of Scholarship Cadet, 18 February 2020, reflective of the Commander, Headquarters, Fourth Brigade's nonconcurrence with the Professor of Military Sciences and the IO's recommendation to retain the applicant in the ROTC program. The elements of contention are further provided in their entirety within the supporting documents for the board's review. The commander recommended that the applicant be disenrolled from the ROTC program with recoupment of \$164,110.00 of scholarship funds.

c. Memorandum – Subject: Rebuttal of Non-Concurrence Memorandum, 9 March 2021, reflective of the applicant's submitted argument to the non-concurrence memorandum provided on 18 February 2021. This document is provided in its entirety for the Board's review within the supporting documents.

d. Memorandum – Subject: Letter of Good Character Judgment, 24 April 2020, reflective of the Assistant Professor of Military Sciences (APMS) testimony regarding the applicant's character wherein he asks for leniency regarding the applicant's disenrollment from the ROTC program. The APMS notes that the applicant should be retained as an ROTC cadet. This document is provided in its entirety for the Board's review within the supporting documents.

e. Memorandum – Subject: Character Reference, 11 July 2020, reflective of second lieutenant (2LT) M_C_ testimony regarding the applicant's character. 2LT M_C_ served as the applicant's mentor while he was enrolled in the ROTC program. He notes that the applicant ranked in the top 5 of about 30 cadets within his cohort and recalls recommending him to serve as the first sergeant for the fall 2019 semester because of his distinguished level of responsibility. Regarding the drug related incident, he believes that the applicant did not knowingly consume illicit drugs. This document is provided in its entirety for the Board's review within the supporting documents.

f. Character Reference letter, 18 July 2020, reflective of Ms. N_ M_, Visiting Assistant Professor of Russian Studies testimony regarding the applicant's character. Ms. N_ M_ served as the applicant's academic advisor while enrolled in the ROTC program. She provides that the applicant proved himself to be not only competent and intelligent, but sincere in his desire to do good work and help others. Overall, the applicant's combination of intelligence, credibility, and strong work ethic made him one of the strongest students that she had in nearly 10 years of teaching. This document is provided in its entirety for the Board's review within the supporting documents.

g. Self-authored letter (Mr. D_ D_) dated 24 July 2020, reflective of his testimony regarding the applicant's character. Mr. D_ D_ is the applicant's father and a veteran. He provides historical substance regarding the changes that participating in the ROTC program has had on the applicant and notes that if given the chance, the applicant would make a fine Army officer.

h. Memorandum – Subject: Sworn Formal Statement, 16 July 2020, reflective of the applicant's testimony regarding why he should be retained in the ROTC program. The applicant provides an account of his accomplishments since being enrolled in the ROTC program as well as the circumstances surrounding his illicit drug use incident. This document is provided in its entirety for the Board's review within the supporting documents.

i. Legal letter – Subject: Hearing in Case, 24 July 2020, reflective of the applicant's legal representations argument in support of retaining the applicant within the ROTC program. Counsel surmises the submitted documentation and references USACC PAM 45-4 regarding the use of drugs and/or chemical substances. He notes that this regulatory guidance provides that cadets are ineligible for retention without waiver if they: admit to frequent and/or recent use of drugs and/or chemical substances, possession of narcotics paraphernalia, sale of said substances and/or paraphernalia, or of having referred persons to others for the purpose of obtaining illegal drugs, chemical substances, and/or drug paraphernalia. The other two reasons for disqualification are convictions for drug usage or a medical disqualification for dependency. He notes that none of these 3 reasons apply to the applicant's situation since there had been no admission of use, no conviction, and no medical dependency. This document is provided in its entirety for the Board's review within the supporting documents.

j. SROTC Contract Agreement – Special Active-Duty Provision – Statement of Understanding dated 11 June 2020, reflective of the applicant's desire to serve on active duty immediately under USACC Special Active-Duty Provision in fulfillment of his SROTC obligation. The applicant acknowledged that his active-duty service would be contingent on the disenrollment proceedings being reviewed by USACC and if the

proceedings were legally sufficient and he was eligible to serve on active duty, USACC would approve the action and promptly issue the necessary orders. Further the applicant understood that if he failed to fulfill this active-duty service obligation, which includes meeting the physical standards for accession, he would be subject to the terms of repayment as specified in his scholarship contract.

k. Memorandum – Subject: Appointment of a Formal Board of Officers/IO to Determine Suitability for Retention in the Army ROTC Program and Amount and Validity of Scholarship Debt, dated 12 June 2020, reflective of the information provided to the board members regarding their responsibility to review the circumstances related to the applicant's disenrollment from the ROTC program, one of which would be to determine if the applicant did/did not breach the terms of the ROTC contract due in whole or in part to, a fact or condition that bars him from appointment as a commissioned officer (positive drug test for cocaine) on 25 November 2019, resulting in his security clearance being revoked and should/should he not be required to repay the \$164,110.00 of advanced educational funds.

l. Memorandum – Subject: Notification of University Representative – Determination of Suitability for Retention in the Army, dated 15 June 2020, reflective of the applicant's legal counsel election to not attend the proceedings, but instead to review the completed findings and provide a response.

m. DA Form 4856 dated 14 February 2020, reflective of the applicant being counseled by the Professor of Military Sciences regarding the initiation of his disenrollment proceedings due to his testing positive for a controlled substance (cocaine).

n. DA Form 705 reflective of the applicant physical fitness test scores on 4 September 2019 and 22 January 2022.

o. Email information, reflective of the USACC being advised on the applicant's positive urinalysis test results.

p. DA Form 5315-E reflective of \$164,110.00 of ROTC scholarship funding being received by the applicant between 18 October 2017 and 11 May 2020.

q. Cadet Security Clearance reflective of a recommendation that the applicant's security clearance be revoked due to his testing positive during the annual urinalysis conducted on 25 November 2019.

r. Postal Service information, reflective of the applicant's receipt of the disenrollment information on 25 June 2020.

4. On 4 January 2022, the Deputy Assistant Secretary of the Army (Military Personnel) (DASA (MP)) carefully reviewed the circumstances pertaining to the disenrollment of the applicant and elected to disapprove his request to appeal his disenrollment and waive his scholarship obligation of \$164,110.00. The Deputy Assistant Secretary of the Army (Military Personnel) directed that he provided repayment of the educational expenses in the amount of \$164,110.00 with interest, if applicable. The DASA (MP) stated:

a. On 7 July 2021, the Commanding General, USACC, disenrolled former Cadet [Applicant] from the ROTC program for breach of contract under the provisions of paragraph 3-43a(11) and recoupment of educational benefits totaling \$164,110.00.

b. On 5 November 2021, the Commanding General, USACC, reviewed the appeal and recommended upholding the disenrollment and full recoupment in the amount of \$164,110.00.

c. When an ROTC scholarship contract is breached, any obligation to the U.S. Army must be satisfied by repaying the cost of advanced education assistance provided by the U.S. Army unless the Secretary of the Army or their designee waives the recoupment amount in accordance with 1.d.

d. The DASA (MP) carefully reviewed the circumstances pertaining to the disenrollment of former Cadet [Name], and disapproved his request to appeal his disenrollment and waive his scholarship obligation of \$164,110.00 and directed him repay his educational expenses in the amount of \$164,110.00 with interest, if applicable.

e. He directed the applicant to notify the Defense Finance and Accounting Service to pursue collection in the above amount plus any interest and penalties that may have accrued since the debt was established initially.

5. On 25 April 2023, the USACC provided via email that the applicant's appeal of his disenrollment and further obligation to repay \$164,110.00 was previously disapproved. The applicant was directed to repay all educational expenses in that amount, with interest. A letter was also sent to the applicant on 21 January 2022 informing him of this decision.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was partially warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered.

a. The evidence of record confirms the applicant accepted an Army ROTC scholarship. He fully understood and accepted the terms of his enrollment. He was disenrolled based on a fact or condition (positive urinalysis for cocaine) that barred him from appointment as a commissioned officer, resulting in security clearance being revoked after appeal process, which constitutes, either individually or collectively, a breach of the terms of his ROTC contract with the U.S. Army.

b. He agreed that if he were disenrolled from the ROTC Program for any reason, he would have to repay his scholarship debt or be ordered to active duty in the rank/grade of PV1/E-1 for an appropriate number of years. He failed to satisfy his contractual requirements of this program. As he was found in breach of his ROTC contract, he was accordingly notified of his disenrollment from the program. His case was considered by a disenrollment board. His disenrollment was ultimately approved by the appropriate official who ordered him to repay the debt. The terms of the ROTC scholarship contract required a cadet to either monetarily repay the debt or agree to be ordered to active duty. He did not serve on active duty and has not shown a reason why he cannot enlist in any component of the Armed Forces, in order to satisfy this debt.

c. He alleges that his obligation to the Army (including his scholarship debt) ceased upon his disenrollment from the ROTC program. The Board found this has no merit. The applicant's disenrollment did not invalidate his ROTC scholarship contract, which outlined grounds for disenrollment and the possibility of recoupment. Furthermore, AR 145-1 explicitly states that the two available options to obtain fulfillment of a former cadet's obligation to the Army after disenrollment from the ROTC program are recoupment of education assistance and enlisted service.

d. The applicant incorrectly argues that it was impermissible for the Army Cadet Command to overrule the local board of officers' recommendation. He justifies this argument by stating it's a "basic tenet" that a reviewing official may do no worse than a board hearing recommends,¹ and by comparing the ROTC disenrollment process to the relationship between the ABCMR and the respective service Secretaries. However, the Board found that neither of these contexts are applicable in this case since the approval authority is not bound by the findings and recommendations of a board and all disenrollment determinations concerning scholarship cadets and bonus recipients are made by Commanding General of Army Cadet Command. The board of officers provides a recommendation.

e. The applicant contends that relief is warranted by the unreasonable 7-month delay between the board of officers' recommendation and the final decision by Cadet Command, during which time he was in limbo regarding his future while his time left in college quickly passed. Regardless of the negative impact on the applicant, he correctly concedes that no timeline or deadlines are specified for the disenrollment process.

While it may be a consideration as to whether an injustice occurred, the delay of a final decision does not mandate relief.

f. Based on the facts of this case and considering processing timeline, the applicant's past or current situation, or any other matter, the Board determined neither an error nor an injustice occurred. He entered into a valid ROTC Cadet Contract. He received advanced educational assistance in the form of ROTC scholarship monies from the U.S. Government and he did not satisfy the contractual agreement which resulted in and constituted a valid debt to the U.S. Government.

g. Nevertheless, the Board determined that although he was not expeditiously called to active duty following his disenrollment from ROTC, that does not prevent him from enlisting in any regular component of the armed forces in the grade of E-1, provided he is otherwise qualified for enlistment. Therefore, the Board agreed that if the applicant enlists in a regular component of the armed forces for 4 years, in the grade of E-1, and upon completion of such enlistment, his enlistment should serve the same purpose as would have been served had he been ordered to active duty through ROTC channels.

h. In view of the facts of this case, the Board determined that it would be appropriate to consider his potential enlistment in a regular component, in the grade of E-1, for 4 years, have met the active duty obligation required by his ROTC scholarship contract as a matter of equity. If he fails to complete 4 years of active duty obligated as a result of his ROTC scholarship either voluntarily or because of misconduct, his ROTC debt should be required to be recouped.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

█ █ █ GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

: : : DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined that the evidence presented was sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending his ROTC scholarship contract to show that he would satisfy a portion of the ROTC debt under the original terms of the ROTC contract by successfully completing a 4-year enlistment in any component of the Armed Forces.

a. The portion of the ROTC debt that would be satisfied by the above correction will be the total amount of the ROTC debt minus any enlistment bonus he could receive in connection with an enlistment in any regular component of the armed forces.

b. If the individual concerned fails to complete the period of enlisted service obligated as a result of his amended ROTC scholarship contract either voluntarily or because of misconduct, his ROTC debt would be required to be recouped in accordance with his DA Form 597-3.

2. The Board further determined that the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to waiving the entire ROTC indebtedness amount.

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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. AR 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 United States Code (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.

2. AR 145-1 (Senior ROTC Program, Organization, Administration and training) provides that a scholarship cadet may be dis-enrolled only by the Commanding General, ROTC Cadet Command. A non-scholarship cadet may be disenrolled by the Professor of Military Science. Disenrollment authority does not include the discharge authority for Simultaneous Membership Program (SMP) participants. Procedures governing disenrolled SMP participants are outlined in AR 601-210. The Commanding General, ROTC Cadet Command, is the only authority for discharge of scholarship cadets. ROTC cadets normally will be honorably discharged on the date of disenrollment from the ROTC program, except those ordered to active duty under the terms of their ROTC contract. If not academically enrolled, the cadet will be ordered to active duty 60 days from date of notification of active duty.

a. Cadets assigned to USAR Control Group (ROTC) may be discharged or separated for the convenience of the Government for termination of a scholarship.

b. Cadets assigned to USAR Control Group (ROTC), who are not ordered to active duty or pending such an order and has no previous military service, or who has not completed a basic training course, will be discharged. The effective date of discharge or transfer will be the date of disenrollment from the ROTC.

c. Scholarship students may be required to repay all or part of their scholarship financial assistance.

3. AR 601-210 (Regular Army and Army Reserve Enlistment Program) provides that an ROTC cadet assigned to Control Group (ROTC) or participating in the SMP who desires to enlist in the RA, to include the Mandatory Service Obligation (MSO) delayed status, may enlist if he or she:

- Has received clearance from the appropriate Professor of Military Science (PMS) or ROTC region commander
- DD Form 368 (Request for Conditional Release) is used for this purpose, and it must be in possession of the recruiting officials before processing the cadet for enlistment

- Has obtained a DD Form 368 from the ARNG or USAR unit commander, as well as the appropriate PMS or ROTC region commander, if the cadet is a participant in the SMP
- Has not been alerted for order to AD under a Presidential call-up or a partial or full mobilization
- Has not been notified of orders directing involuntary order to AD
- Is not an ROTC scholarship recipient

4. Title 10, USC, section 2005 (Advanced Education Assistance: Active Duty Agreement; Reimbursement Requirements), provides that the Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree:

a. To complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement

b. That if such person failed to complete the education requirements specified in the agreement, such person would serve on active duty for a period specified in the agreement (usually a four-year enlistment at the grade of E-1, in a MOS at the needs of the Army)

c. That if such person does not complete the period of active duty specified in the agreement, or does not fulfill any term or condition prescribed, such person shall be subject to the repayment provisions of Title 37 USC, section 303a(e); and

d. To such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

//NOTHING FOLLOWS//