

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 December 2023

DOCKET NUMBER: AR20230004512

APPLICANT REQUESTS: in effect,

- cancellation or remission of his Reserve Officers' Training Corps (ROTC) scholarship indebtedness in the amount of \$17,465.00
- a personal appearance before the Board via video or telephonically

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored Statement
- U.S. Army Recruiting Battalion Montgomery Orders Number 007
- Excerpt from U.S. Army Cadet Command (USACC) Regulations 145-11 (ROTC Simultaneous Membership Program (SMP))
- Text message
- E-mails

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 effect, he requests the amount of his indebtedness be prorated to reflect he only owes for the fall 2019 semester and spring 2020 semester instead of the \$17,465.00 due to his contract being voided.

He was discharged from the U.S. Army Reserve (USAR) in February 2020 and should not have been receiving any ROTC benefits after his discharge. He also performed military duty in the USAR after the effective date of his discharge because he and his unit were not aware of the discharge until October 2022.

When he heard about the SMP being offered at the University of Alabama at Birmingham (UAB) he believed it would be an opportunity to continue his education,

avoid a massive student debt and to serve his country with his future skills in the healthcare field. He enlisted in the USAR in August 2019 and began in the ROTC program in the fall semester of 2019. He then contracted with the UAB ROTC in December 2019. He was discharged by the Military Entrance Processing Station (MEPS) for unknown reasons, and he was never notified of the discharge (wrong address attached to the MEPS discharge) and subsequently continued his obligations to the ROTC. When he tested positive on a drug test, the Army brought this information to his attention. In October 2021, he found out he was discharged by the MEPS. In order to maintain his eligibility in the SMP he was required to be a member of the USAR Troop Program Unit (TPU). When he received his discharge orders, he questioned how his discharge was overlooked and how they allowed him to receive benefits when he did not meet the qualifications due to the discharge.

Between October 2020 through October 2022, he was in contact with UAB ROTC to complete the disenrollment process. He was told that signing the 131R in October 2022 was solely for disenrollment from the ROTC program and that someone would be in contact with him to discuss the repayment of his indebtedness for the ROTC scholarship. On 6 October 2022, he signed the 131R with the intent of waiving his right to disenrollment from the program.

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

a. On 21 May 2019, the applicant signed a DA Form 4824 (Addendum to Certificate and Acknowledgement of Service Requirements for all Personnel Applying for Participation in the ROTC SMP) which shows the applicant selected option 2 to enlist for ROTC/SMP with no previous military service or ROTC credit for enrollment in Advanced ROTC. Entry on Initial Active Duty for Training (IADT) to completed Basic Combat Training was required to be completed prior to entrance in the ROTC/SMP. Section 2c stated I understand that participants in the Army ROTC scholarship program are not eligible for participation in ROTC/SMP. ROTC/SMP participants may apply for Army ROTC scholarships: however, they will be reassigned from the TPU to the Control Group (ROTC) prior to acceptance of such scholarships.

b. The applicant enlisted in the USAR on 30 August 2019.

c. on 13 December 2019, the applicant signed DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) which stated the Department of the Army agreed to pay scholarship benefits for 3 academic years to cover full tuition and fees and a flat rate of \$1,200.00 for books and laboratory expenses. The applicant agreed as a condition for membership in the Army ROTC program he agreed to enlist in the Reserve component of the U.S. Army with assignment to the USAR Control Group (ROTC).

Part II (Agreement of Scholarship Cadet Contracting in the Senior ROTC Program),

f (Medical and Physical Fitness Standards) he agreed to maintain eligibility for enrollment and retention in the ROTC throughout the period of the contract and agreed to undergo pre-commissioning drug and alcohol screening tests, normally administered during Leader Development and Assessment Course (LDAC) or as may otherwise be prescribed by the USACC. If the result of any test is positive, he would be disenrolled from the ROTC program.

The terms of disenrollment which the applicant agreed to was if he was disenrolled from the ROTC program for breach of contractual terms or any other disenrollment criteria established at the time of contract or in the future he would be subject to service on enlisted active duty for not more than 4-years or to reimburse the U.S. government any advanced educational assistance in lieu of being ordered to active duty. If he was, he would be required to repay the money, plus interest, equal to the entire amount of financial assistance to include tuition, educational fees, books, laboratory expenses, and supplies. The Secretary of the Army or his or her designee retains the prerogative to either order him to active duty or order monetary repayment of his scholarship benefits.

d. On 19 December 2019, Orders Number 0014030, issued by the MEPS, the applicant was ordered to initial active duty for training, effective 14 January 2020 for completion of basic combat training.

e. On 7 January 2020, Orders Number 007, issued by the U.S. Army Recruiting Battalion Montgomery, the applicant was discharged from the USAR with an uncharacterized character of service.

f. DA Form 5016 (Chronological Statement of Retirement Points) shows the applicant obtain 14-days of active duty points during retirement year 31 August 2019 through 30 August 2020 and 15-days of active duty points during retirement year 31 August 2020 through 30 August 2021.

4. The applicant provides:

a. Excerpt for USACC Regulation 145-11, page 11 shows the ROTC student/cadet contracting criteria:

- contracted in non-scholarship or scholarship in ROTC Advanced Course or Military Science (MS) II
- enrolled with a minimum of 2-years remaining in full time course of instruction
- maintain a grade point average of 2.0

The reserve criteria:

- current member of Army National Guard (ARNG) or USAR TPU or be eligible to enlist
- enlist in ARNG or USAR prior to enrollment in ROTC Advance Course, must have completed Basic Combat Training, ROTC Leader's Training Course, or MS I
- have remaining statutory or contractual service obligation of 4 or more years at the time of ROTC enrollment
- meet medical fitness standards
- meet height and weight standards
- be a U. S. citizen
- meet component specific criteria

b. Text message from Army ROTC USAB inquiring if the applicant had the 133R and if he wanted a board. The applicant replied asking if the 133R was from ROTC or big Army and that he did want a board.

c. E-mail traffic between the applicant and Army ROTC UAB informing the applicant that his option to repay indebtedness was to repay it or enlist in the Armed Forces. The applicant responded he would sign the 131R and wait for council to meet with him to appeal the requirement to repay the indebtedness.

5. On 8 May 2023, in the processing of this case, Headquarters, U.S. Army Cadet Command, provided an advisory opinion regarding the applicant's request for partially waived or prorated reimbursement of his ROTC indebtedness. The advisory official stated that USACC is not authorized to waive a properly established debt which resulted from a breach of the ROTC contract. The applicant stated he was discharged from the SMP unit unknowingly and therefore should not have to pay back the scholarship benefits he received after his discharge on 20 February 2020 because he was already in breach of the contract. The applicant's contract stated a failure to disclose any disqualifying condition including any conditions he should have known about would subject him to disenrollment from the ROTC program and possible recoupment of the scholarship benefits. This included discharge from the USAR.

The advisory official provided the USACC disenrollment packet for the applicant, which shows on 19 October 2022 the applicant was disenrolled and discharged from the ROTC program under the provisions of Army Regulation (AR) 145-1 (Senior ROTC Program Organization, Administration, and Training), paragraph 3-43a (14) based on his misconduct by a positive urinalysis for Tetrahydrocannabinol (THC). When his ROTC scholarship contract was breached, any obligation to the Army must be satisfied by repaying the cost of advanced education assistance provided by the Army in the amount of \$17,465.00. The applicant had the option to repay the indebtedness in a lump sum payment or to initiate a repayment plan.

The applicant was notified of the initiation of disenrollment on 20 September 2021. He acknowledged the notification on 5 October 2021. He also acknowledged and admitted to the breach of the terms of the ROTC contract and he waived:

- hearing before a board president
- personally appear at the hearing
- challenge the existence of a valid contract
- respond to and deny the allegation that he breached the terms of ROTC contract
- present witnesses, evidence, and other information in his own behalf
- dispute the basis of the disenrollment
- dispute the amount and validity of the indebtedness
- dispute or influence the approving authority final decision
- request forgiveness in whole or part of indebtedness
- appeal disenrollment or indebtedness

The applicant declined call to active duty to fulfill the contractual obligation with the U.S. Army.

The disenrollment packet is available for further review.

6. On 9 May 2023, the Army Review Boards Agency, Case Management Division provided the applicant the advisory opinion for review and comment. The applicant responded stating that he could not have known of his discharge from the USAR because the zip code on the discharge order was incorrect which resulted in not receiving the notification of his discharge. Therefore, not allowing him to report the discharge to the ROTC chain of command. This lack of notification led him to be on the payroll, roll call, and attended battle assemblies for almost 3-years until October 2021. His command was in disbelief and assured him they had no knowledge of the discharge. He had already been disenrolled from the ROTC program for a positive urinalysis. He does not agree with the requirement to payback the \$17,465.00 but he does agree to paying the benefits he utilized from the 2019 fall semester until February 2020 when he was discharged because he was never notified of the discharge in order to report this to his unit or the ROTC.

BOARD DISCUSSION:

1. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's contentions, the military record, and regulatory guidance. Upon signing a contract a 3-year scholarship for a ROTC Simultaneous Membership Program, the applicant agreed to the terms and conditions thereof. He became subject to disenrollment after testing positive for THC and therefore, subject to recoupment. Further, documentation shows he waived his rights to a disenrollment board and to appeal the disenrollment. Although, he states he was disenrolled unknowingly from his SMP unit, the Board agreed that he should have otherwise known his misconduct would be in violation of the terms and conditions of the contract. After due consideration of the request, the Board determined the evidence presented did not meet the burden of proof in determining an error or injustice and a recommendation for relief is not warranted.

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 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.

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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. 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. AR 600-4 (Remission or Cancellation of Indebtedness) provides policy and instructions for submitting and processing packets for remission or cancellation of indebtedness to the U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled based on this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

3. AR 145-1 (Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training), prescribes policies and general procedures for administering the Army's Senior Reserve Officers' Training Corps (SROTC) Program. Except as an implementation of statute or otherwise prohibited, waivers and exceptions to the provisions of this regulation will be forwarded through command channels to Headquarters, Department of the Army (HQDA) proponent, HQDA (DAPE-MPO). 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 3-39 (Termination of scholarship and disenrollment), the Commanding General, ROTC Cadet Command, is the approving authority for termination of scholarship and/or disenrollment. A scholarship will be terminated, and the cadet dis-enrolled for any of the reasons listed in paragraph 3-43.

b. Paragraph 3-43 (Disenrollment), a. A non-scholarship cadet may be dis-enrolled by the Professor of Military Science. A scholarship cadet may be dis-enrolled only by the CG, ROTCCC. Disenrollment authority does not include the discharge authority for SMP participants. Non-scholarship and scholarship cadets will be dis-enrolled for the following reasons: Subparagraph (14) Undesirable character demonstrated by cheating on examinations, stealing, unlawful possession, use, distribution, manufacture, sale (including attempts) of any controlled substances, as listed or defined in 21 USC 812, discreditable incidents with civil or university authorities, falsifying academic records or any forms of academic dishonesty, failure to pay just debts, or similar acts. Such acts may also be characterized as misconduct. Subparagraph (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).

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. 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

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

5. AR 15-185 (Army Board for Correction of Military Records (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 applicants 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//