

IN THE CASE OF: ██████████

BOARD DATE: 15 February 2024

DOCKET NUMBER: AR20230004908

APPLICANT REQUESTS: remission of Reserve Officers' Training Corps (ROTC) debt.

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

- DD Form 149 (Application for Correction of Military Record)
- Headquarters and Headquarters Company, 1st Sustainment Command (Theater) letter, 5 December 2013
- DA Form 31 (Request and Authority for Leave), 28 November 2021
- Enlisted Record Brief
- Orders Number 122-0155, 2 May 2022
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 23 October 2022

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 pertinent part that he elected to serve on active duty for over 9 years and was unaware of the process to request debt remission. He contests that in December 2013, he was made aware of the process and sought the assistance of the Judge Advocate General (JAG) after he began being harassed by a debt collection agency. He notes that in April 2023, he received a notification from the Defense Finance and Accounting Service (DFAS) indicating he had a \$13,547.76 debt.

3. A review of the applicant's available service records reflects the following:

a. On 2 November 2010, the applicant enlisted in the U.S. Army Reserve (USAR) as a Cadet for 8 years with entitlement to the ROTC scholarship. DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) completed at the time of enlistment provides the contractual obligation associated with the ROTC scholarship program. Paragraph 5 (Terms of Disenrollment) provides understanding that once the applicant became

obligated, subsequently disenrolled from the ROTC program due to a breach of contract, that he may be ordered to active duty as an enlisted Soldier for a period not more than 4 years or offered the opportunity to repay his advanced educational assistance in lieu of being ordered to active duty. The applicant agreed to repay the entire amount of money previously received, plus interest. Paragraph 5 (e.) provides understanding that if the applicant was disenrolled from ROTC, the Secretary of the Army, retains the prerogative to either order him to active duty or order the repayment of the scholarship benefits. Therefore, if the applicant is required to repay his advanced educational assistance under the terms of the contract, his subsequent enlistment in the Armed Service would not relieve him from repayment of the obligation.

b. On 16 February 2011, the applicant elected to participate in the Simultaneous Membership Program (SMP).

c. On 6 April 2011, the Professor of Military Science (PMS) initiated the applicant's disenrollment from the ROTC program due a breach of contract for failure to attend the Spring Field Training Exercise, numerous classes/labs and voluntary withdrawal from the Early Commissioning Program. The applicant was also unable to attend the Leadership Development and Assessment Course making him ineligible to commission as a second lieutenant. The applicant was advised that as a scholarship cadet, he may be called to active duty as an enlisted Soldier or required to repay scholarship benefits (\$13,273.50) in lieu of the call to active duty. However, as a SMP participant, he would be released to his unit in order to satisfy his remaining contractual military service obligation and required to repay all scholarship benefits expended (\$13,273.50).

d. On 19 April 2011, the applicant waived his rights to a hearing, acknowledged the amount and validity of the \$13,273.50 debt and declined being called to active duty within 60 days after completion of his current projected graduation date or upon withdrawal/dismissal from school, whichever occurs first.

e. On 6 October 2011, the Commander, Headquarters, U.S. Army Cadet Command notified the applicant that he was disenrolled and discharged from the ROTC program in accordance with Army Regulation (AR) 145-1 (Senior ROTC Program: Organization, Administration, and Training), Paragraphs 3-43a.(15) and (16) due to a breach of contract based on his indifferent attitude and a lack of interest in military training as evidenced by his withdrawal from the ROTC program. Since the applicant was a member of the SMP, he would be released to his unit to fulfill the remainder of his service obligation. In addition to being released to his unit, the applicant was required to repay \$13,273.50 in previously received scholarship funds. The applicant was afforded two options: payment in full/lump sum or establish a payment plan. The applicant was afforded 14 days to make an election. Failure to make a repayment election may result in the initiation of an involuntary collection.

f. On or about 1 November 2011, the applicant's acting commander initiated action to separate him from the USAR due to his failure to meet entry level requirements (failure to maintain membership in the SMP).

g. On or about 4 November 2011, the applicant acknowledged receipt of the notification of separation action, waived his rights to appear before a hearing, submit written statements or to consult with legal counsel.

h. On 28 February 2012, Headquarters, 63rd Regional Support Command issued Orders Number 12-059-00083 discharging the applicant from the USAR, effective 6 March 2012.

i. On 18 May 2012, the applicant was notified by DFAS of the \$13,273.50 ROTC debt. Subsequently the initiation of a \$368.82 monthly payment was established with the first payment due on 18 June 2012.

j. On 4 February 2013, the applicant enlisted in the Regular Army to serve as an 11B (Infantryman) for 5 years.

k. On 24 October 2018, the applicant reenlisted in the Regular Army for 4 years.

l. On 2 May 2022, the U.S. Army Installation Management Command issued Orders Number 122-0155 reassigning the applicant to the U.S. Army transition point pending transition processing.

m. On 23 October 2022, the applicant was honorably discharged from active duty. He completed 9 years, 8 months, and 20 days of net active service.

4. The applicant provides:

a. Headquarters and Headquarters Company, 1st Sustainment Command (Theater) letter dated 5 December 2013, reflective of the applicant being represented by legal counsel and assertion of his active-duty status to DFAS. Pioneer Credit Recovery was advised that the effect of this status should result in the suspension of any further collection action being executed and recalled to DFAS.

b. DA Form 31 dated 28 November 2021, reflective of the applicant's approved request to take 77 days of terminal leave from 8 August 2022 – 23 October 2022.

c. Enlisted Record Brief, reflective of the applicant's pertinent personnel and administrative information to include assignment history and service data.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the terms outlined in the ROTC scholarship documents and the evidence showing the applicant failed to meet those terms, the Board concluded the debt levied upon the applicant was just and that there was insufficient evidence of an error or injustice warranting relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	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.

5/14/2024

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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. 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) in accordance with the authority of Title 10 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.

3. AR 145-1 (Senior ROTC Program, Organization, Administration and Training) provides that a scholarship cadet may be disenrolled only by the Commanding General, ROTC Cadet Command. A non-scholarship cadet may be disenrolled by the Professor of Military Science. Paragraph 3-43 (Disenrollment) provides that a scholarship and nonscholarship cadet will be disenrolled if they display an inaptitude for military service as demonstrated by lack of general adaptability, skill, hardiness, ability to learn, or leadership abilities. Cadet's will also be disenrolled if that display an indifferent attitude or lack of interest in military training as evidenced by frequent absences from military science classes or drill, an established pattern of shirking, failure to successfully complete an established weight control program, or similar acts. A breach of contract 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.

a. A board of officers will be appointed by the PMS, the brigade commander, or the region commander according to the formal procedures outlined in AR 15–6, as modified by this regulation (see AR 15–6, para 1–1) and guidance from the CG, USAROTCCC, to consider the case of each cadet considered for disenrollment.

b. A cadet who is involuntarily ordered to active duty for breach of his or her contract will be so ordered within 60 days after they would normally complete baccalaureate degree requirements, provided the cadet continues to pursue a baccalaureate degree at the school where they are enrolled in the ROTC or the school where the cadet has agreed to pursue such degree, if the school where he or she is enrolled does not offer that degree. If not academically enrolled, the cadet will be ordered to active duty 60 days from date of notification of active duty. Graduate students may not be ordered to active duty until they complete the academic year in which they are enrolled, or disenroll from the school, whichever occurs first.

c. Paragraph 3-44 (Discharge and Separation from the USAR) provides that the CG, ROTCCC, is the only authority for discharge of scholarship cadets. Members of the SMP who were in the ROTC control group prior to joining a troop program unit may be returned to the ROTC control group for the purpose of call to active duty if found to be in breach of their contract. Although the PMS is authorized to order discharge of enlisted members of the USAR assigned to USAR Control Group (ROTC) for them to accept a commission, the PMS does not have that authority for SMP participants assigned to USAR or ARNG units.

4. AR 601-210 (Regular Army and Reserve Components Enlistment Program) provides eligibility criteria governing the enlistment of persons, with or without prior service (PS) into the Regular Army (RA), the U.S. Army Reserve (USAR), and the Army National Guard (ARNG). Paragraph 5-20 (Application for Enlistment) 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 MSO delayed status, may enlist if he or she is a SMP participant.

a. A cadet who is disenrolled from ROTC Basic/LDAC (MS III or MS IV) will be dropped from the ROTC/SMP. If otherwise qualified, he or she will be retained in the Troop Program Unit until completion of the Soldier's contractual or statutory service obligation.

b. A cadet will be involuntarily released from the ROTC/SMP and reassigned to Control Group (ROTC) when the cadet is removed from the ROTC/SMP for cause based on performance or conduct.

5. 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//