

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2024

DOCKET NUMBER: AR20230005517

APPLICANT REQUESTS: remission/cancellation of indebtedness from disenrollment from the Reserve Officers' Training Corps (ROTC) in the amount of \$95,878.96.

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

- DD Form 149 (Application for Correction of Military Record)
- Personal Letter
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States), 29 January 2009
- DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract), 2009
- Embry-Riddle Aeronautical University, Safety Department, Incident Report packet
- DA Form 5315-E (U.S. Army Advanced Education Financial Assistance Record), 6 December 2010
- Memorandum, Subject: Disenrollment of Scholarship Cadet from ROTC, 17 December 2010
- Privacy Act Statement, Army Senior ROTC Disenrollment Proceedings, 29 December 2010
- Senior ROTC Contract Agreement Special Active Duty Provision Statement of Understanding, 29 December 2010
- Memorandum, Subject: Disenrollment Recommendation, 13 January 2011
- Memorandum, Subject: Disenrollment for the U.S. Army ROTC - Commanding General
- Checklist for Disenrollment
- DD Form 785 (Record of Disenrollment from Officer Candidate Type Training), 18 April 2011
- Defense Finance and Accounting Service (DFAS) Debt Letter, 29 January 2014
- DD Form 4, 6 January 2015
- DD Form 1966-1 (Record of Military Processing - Armed Forces of the United States), 6 January 2015
- DA Form 3286 (Statement for Enlistment, United States Army Enlistment Program), 6 January 2015
- DD Form 4, 10 July 2018

- DA Form 3286-79 (Statements for Reenlistment), 10 July 2018
- Office of the Deputy Chief of Staff, G-6, Freedom of Information Act (FOIA) Letter Response, 6 August 2019
- DFAS Debt statement, 3 April 2023

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:

a. Although he was disenrolled from ROTC and was required to pay back the tuition assistance he received, plus interest, he has enlisted and served in the Regular Army for 8 years which should count as service towards that debt.

b. He entered into the Army's ROTC program at Embry-Riddle Aeronautical University in 2009 and signed a contract to receive tuition assistance in exchange for a four-year service commitment upon commissioning after graduation.

c. During his junior year of college, on 9 October 2010, several of his friends committed theft of property belonging to other students. He was implicated in the crime because he was often seen in their company; however, he did not actually steal anything. Both of the responsible parties admitted that they were the only two involved, and ultimately the property was returned. Despite this, he was disenrolled from the ROTC program in April 2011.

d. In January 2014, he received a debt letter from DFAS for a total of \$64,039.00 related to the ROTC scholarship. On 6 January 2015, he enlisted in the U.S. Army for 4 years and 26 weeks, beginning at the pay grade of E-3 with no bonuses or incentives.

e. The current balance of this debt, as of April 2023, is \$95,878.96 with minimum monthly payments of \$1,806.42, at an interest rate of 1 percent. Prior to enlisting in the Army, DFAS informed him that he could have this debt put into a hold status while he served on active duty, while he attempted to pursue a correction of military record to waive the debt following a minimum of time served.

f. He has currently served eight years in the Army. While he did not serve as a commissioned officer, as originally intended when he enrolled in ROTC, he has served honorably as an enlisted Soldier. The Army has received the full value of his initial four

year service commitment twice over. Because of this, he requests that the debt be relieved in its entirety, including principal and interest.

g. It would also be a great financial hardship to pay back this debt. He is currently preparing to transition from the Active Army to the Colorado Army National Guard while learning a new career field in preparation for transition to the civilian work force. His current path is leading to further education upon transition and will take approximately two additional years to complete. In addition, he is also paying a mortgage for a home in Colorado Springs, CO, with his wife, who is his dependent.

h. Furthermore, his record of service has been exemplary. At Fort Bragg, NC, he served as a squad leader for two years ensuring Special Forces instructors and candidates had all the necessary transportation resources available to them for training for the United States Army John F. Kennedy Special Warfare Center and School. At Fort Carson he served as both a squad leader, platoon sergeant, as well as the battalion operations sergeant and battalion commander's driver ensuring maximum success of the 704th Brigade Support Battalion. His awards and decorations include the following:

- Meritorious Service Medal
- Army Commendation Medal
- Army Achievement Medal (3rd Award)
- Army Superior Unit Award
- Army Good Conduct Medal (2nd Award)
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Non-Commissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Parachutist Badge
- Air Assault Badge
- Expert Marksmanship Badge with Rifle Bar
- Nine Certificates of Achievement
- Driver and Mechanics Badge with Driver-Wheeled Vehicle Clasp

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

a. On 29 January 2009, he enlisted in the U.S. Army Reserve as a Cadet in the Embry-Riddle Aeronautical University ROTC program. In conjunction he signed DA Form 597-3 wherein the Army would pay for 3.5 academic years. Item 5 (Terms of Disenrollment) states:

(1) Paragraph a (I agree to serve on enlisted active duty) states, "under the terms

of this contract, the Secretary of the Army or his or her designee, may order me to active duty as an enlisted soldier, if I am qualified, for a period of not more than four (4) years if I fail to complete the ROTC program."

(2) Paragraph c (Failure to complete required service obligation) states, "I understand and agree that if I voluntarily or because of misconduct fail to begin or fail to complete any period of active duty or duty in a reserve status not on active duty that I have incurred under this contract whether as an officer or an enlisted soldier, I will be required to reimburse the United States an amount of money, plus interest, that is equal to or bears the same ratio to the total cost of the financial assistance provided to me by the United States as the unserved portion of such duty bears to the total period of such duty I was obligated to serve.

(3) Paragraph e (I agree that any obligation to reimburse will not be altered by subsequent enlisted duty) states " If I am disenrolled from ROTC, I understand the Secretary of the Army, or his or her designee, retains the prerogative to either order me to active duty or order monetary repayment of my scholarship benefits. Therefore, if I am required to repay my advanced educational assistance under the terms of this contract, my subsequent enlistment in an Armed Service will not relieve me from my repayment obligation."

b. On 17 December 2010, by Memorandum, Subject: Disenrollment of Scholarship Cadet from ROTC, the Professor of Military Science (PMS) informed the applicant he was initiating his disenrollment from the ROTC program in accordance with Army Regulation (AR) 145-1 (Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training) paragraph 3-43a(4)(14) due to undesirable character demonstrated by his discreditable incidents with university authorities. He was placed on leave of absence pending disenrollment.

c. The applicant acknowledged receipt and elected to waive his right to a hearing, declined a call to active duty within 60 days and accepted an expeditious call to active duty in fulfillment of his contractual obligation.

d. Privacy Act Statement, Army Senior ROTC Disenrollment Proceedings, dated 29 December 2010 submitted as unspecified part of the disenrollment paperwork.

e. Senior ROTC Contract Agreement Special Active Duty Provision Statement of Understanding, dated 29 December 2010 wherein he requested to serve on active duty immediately under the Cadet Command's Special Active Duty provisions for a period of 3-years.

f. On 13 January 2011, by Memorandum, Subject: Disenrollment Recommendation, the Sixth Brigade Commander, Colonel L- I-, recommended approval of the applicant's

disenrollment, requiring him to repay his scholarship, and disapproval of his request for immediate call to active duty. The brigade commander stated that the applicant is a 4-year scholarship recipient and was dismissed from Embry Riddle University for being involved in campus theft. He concurred with the PMS to disenroll the applicant and required him to repay his scholarship. He non-concurred with the applicant's request to be called to active duty expeditiously.

g. On or about 13 April 2011, by Memorandum, Subject: Disenrollment for the U.S. Army ROTC Program– the Commanding General, United States Army Cadet Command Commanding General, formally disenrolled the applicant from the ROTC program for undesirable character requiring him to repay his scholarship in the amount of \$64,039.00.

h. On 18 April 2011, the U.S. Army ROTC Battalion, Embry-Riddle Aeronautical University issued Orders Number 108-01 discharging him from the U.S. Army ROTC Control Group.

4. On 6 January 2015, he enlisted in the Regular Army for a period of 4 years. He enlisted for Program 9B United States Army Station/Unit/Area/Command Enlistment Program, in grade E-3.

a. ABCMR Docket Number AR20170009634, dated 31 July 2017 shows he applied for relief from the ROTC indebtedness but the request was administratively closed for failure to supply the necessary documents to adequately process his request.

b. On 10 July 2018, he immediately reenlisted in the Regular Army for a period of 5 years.

c. On 5 July 2023, prior to his separation from active duty, he enlisted in the Colorado Army National Guard (COARNG), effective 10 July 2023, upon the completion of his Regular Army Service, for a period of 2 years.

d. He was honorably discharged from active duty on 9 July 2023 in accordance with chapter 4 of Army Regulation 635-200 (Active Duty Enlistment Administrative Separations) due to completion of required active service. Item 12 (Record of Service) shows service from 6 January 2015 to 9 July 2023 for a net active service this period of 8 years, 6 months, and 4 days.

e. DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty), dated 14 August 2023 shows amendment to Block 9 removing "N/A" and adding Company E, 5th Battalion, 19th Special Forces Group (SFG).

f. He continues service with the COARNG.

5. The applicant provides the following:

a. Embry-Riddle Aeronautical University, Safety Department, Incident Report packet showing he and other Cadet classmates were involved in an incident of misconduct of vandalism and theft which led to the recommendation of disenrollment from ROTC. Included with the packet were the following documents: Safety Department Supplemental Report and Character Letters

b. DA Form 5315-E dated 6 December 2010 showing his total indebtedness at that time was \$64,039.00.

c. Senior ROTC Contract Agreement Special Active Duty Provision Statement of Understanding, dated 29 December 2010 wherein he requested to serve on active duty immediately under the Cadet Command's Special Active Duty provisions for a period of 3-years.

d. Memorandum, Subject: Disenrollment Recommendation, dated 13 January 2011 signed by the Headquarters, Sixth Brigade Commander, Colonel L- I-, wherein he recommended approval of the applicant's disenrollment, requiring him to repay his scholarship, and disapproval of his request for immediate call to active duty.

e. Memorandum, Subject: Disenrollment for the U.S. Army ROTC Program– signed by the United States Army Cadet Command Commanding General, Major General J- M- formally disenrolling him from the ROTC program for undesirable character requiring him to repay his scholarship in the amount of \$64, 039.00.

f. Checklist for Disenrollment as unspecified supporting evidence together with DD Form 785 dated 18 April 2011 showing he was disenrolled from ROTC for undesirable character with no recommendation for other officer training in the future.

g. DFAS Debt Letter dated 29 January 2014 showing he is indebted to the U.S. Government as a result of overpayments before his recent separation.

h. DD Form 1966-1 dated 6 January 2015 showing his enlistment in the Regular Army.

i. DA Form 3286 dated 6 January 2015 submitted as part of his enlistment in the Regular Army.

j. DA Form 3286-79 dated 10 July 2018 as unspecified supporting evidence for his reenlistment in the Regular Army.

k. Office of the Deputy Chief of Staff, G-6, Freedom of Information Act (FOIA) Letter Response dated 6 August 2019 providing the applicant with the documentation for ROTC disenrollment to file his request for remission or cancellation of indebtedness.

l. DFAS Debt statement, dated 3 April 2023 showing his total debt balance with interest of \$95,878.96.

BOARD DISCUSSION:

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

a. The evidence of record confirms the applicant was accepted into an Army ROTC scholarship program. However, he did not satisfy the contractual requirements of this program due to his undesirable character demonstrated by his discreditable incidents (campus theft) with university authorities. He was disenrolled from the ROTC program and he was subsequently found in breach of his ROTC contract. He was advised of his rights. The chain of command did not recommend his entry on active duty. The CG approved the disenrollment but disapproved the applicant's call to active duty. He accepted this decision and promised to pay the debt back.

b. The terms of the ROTC scholarship contract required a cadet to either repay the debt or agree to be ordered to active duty as an enlisted Soldier in the Army through ROTC channels based on the needs of the Army, in the rank/grade of PVT/E-1. Despite not being recommended for active duty, he enlisted in the RA for 4 years on 6 January 2015 in pay grade E-3 and followed that with a reenlistment on 10 July 2018. Notwithstanding the fact that he enlisted at a higher pay grade than he would have held had he been ordered to active duty in the Army, his enlistment in the RA served the same purpose that would have been served had he been ordered to active duty in the U.S. Army. In other words, the Department of Defense still had the benefit of his active duty service. The Board determined his enlistment in the Regular Army have met the active duty obligation required by his ROTC scholarship contract.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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:	:	:	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 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 he would satisfy the service obligation under the original terms of his ROTC contract as an enlisted member of the U.S. Army.

2. The Defense Finance and Accounting Service will determine if he was paid a U.S. Army enlistment bonus for his enlistment in the Regular Army in January 2015. In the event that he received an enlistment bonus, that bonus payment should be recouped to offset an equal portion of his ROTC scholarship debt.

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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. Army Regulation (AR) 145-1 (Senior ROTC Program: Organization, Administration, and Training) prescribes policies and general procedures for administering the Army's Senior ROTC Program.

a. Paragraph 3-31 (Introduction) 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 3-43 (Disenrollment) (a)(14) states a scholarship cadet may be disenrolled only by the Commanding General, ROTC Cadet Command. 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 Title 21, USC, section 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.

3. Title 10 USC:

a. Section 2005(a) states, 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 under the terms of which such person shall agree: (1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement and (2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement.

b. Section 2005(c) states, the Secretary concerned shall require that the person enter into the agreement described in subsection (a). In addition to the requirements of paragraph (1) through(4) of such subsection, the agreement shall specify that, if the person does not complete the education requirements specified in the agreement or does not fulfill any term or condition prescribed pursuant to paragraph (4) of such subsection, the personal shall be subject to the repayment provisions of section 303a(e)

(Repayment of Unearned Portion of Bonuses and Other Benefits When Conditions of Payment Not Met; Termination of Entitlement to Unpaid Amounts) or 373 (Repayment of unearned portion of bonus, incentive pay, or similar benefit, and termination of remaining payments, when conditions of payment not met) of Title 37 without the Secretary first ordering such person to active duty as provided for under subsection (a)(2) and sections 2107 (Financial assistance program for specially selected members)(f) and 2107a(f).

4. 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.

//NOTHING FOLLOWS//