

IN THE CASE OF: ██████████

BOARD DATE: 28 February 2024

DOCKET NUMBER: AR20230006476

APPLICANT REQUESTS:

- remission of debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds
- repayment of all previously collected funds

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum – Subject: Disenrollment and Instructions for Order to Active Duty, 26 July 2016
- Orders Number 210-002, 26 July 2016
- Orders Number 207-100, 26 July 2016
- Orders Number 6312032, 2 November 2016
- Defense Finance and Accounting Services (DFAS) letter, 27 January 2017
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 28 July 2020
- Orders Number 221-030, 9 August 2021

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 when he was disenrolled from the ROTC program, he agreed to serve on active duty in lieu of being required to repay his previously received scholarship funds. He contests that he was obligated to serve 48 months on active duty and is still serving. He notes that he is unable to provide repayment and attempts to address the issue through the ROTC Cadet Command and DFAS have been unsuccessful.

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

a. On 22 January 2013, the applicant enlisted in the U.S. Army Reserve (USAR) for 8 years. The applicant also contracted for 3 years in the University [REDACTED] ROTC program with a projected completion date of 15 December 2015. As a scholarship cadet, the applicant was entitled to receive tuition and educational fees. 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 2d (Academic Grade Point Average Agreement) shows that applicant agreed to maintain a grade point average of 2.0 on a 4.0 scale. 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 was 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 26 July 2016, the Department of the Military Science, University [REDACTED] issued Orders Number 207-100 discharging the applicant from the ROTC, effective 26 July 2016, due to his failure to maintain a minimum semester and cumulative grade point average of 2.0.

c. On 7 November 2016, the applicant enlisted in the Regular Army for 5 years to serve as a 31B (Military Police).

d. On 28 July 2020, the applicant was honorably discharged from active duty in order to accept a commission. DD Form 214, item 12a. (Date Entered Active Duty this Period) reflects "7 November 2016"; item 12c. (Net Active Service this Period) reflects "3 years, 8 months, and 22 days"; item 18 (Remarks) reflects that the applicant had not completed his first full term of service.

e. On 29 July 2020, the applicant was appointed a Reserve commission as a Warrant Officer and subsequently ordered to active duty for a period of 6 years upon successful completion of the Warrant Officer Candidate Course (Orders Number 211-360-A-841).

4. The applicant provides the following a:

a. Memorandum – Subject: Disenrollment and Instructions for Order to Active Duty, dated 26 July 2016, reflective of the applicant being notified that he was being disenrolled from the ROTC program due to a breach of contract. The applicant requested to be ordered to active duty as an enlisted Soldier in order to fulfill his contractual obligation. The applicant was further advised that his term of active-duty service would be 48-months as specified within his ROTC contract. If he failed to complete the 48-months of obligated service, he would be required to repay \$31,753.15 of previously received educational assistance.

b. Orders Number 210-002 dated 26 July 2016, reflective of the applicant being ordered to active duty, in order to satisfy the terms of his ROTC contract, for a period of 48-months with a report date of 20 September 2016. Recoupment of \$31,753.15 applies if the applicant fails to fulfill the service obligation.

c. Orders Number 6312032 dated 2 November 2016, reflective of the applicant being assigned to Fort Leonard Wood, MO, for the completion of One Station Unit Training with a reporting date of 7 November 2016. These orders further provide that the applicant had a 5-year active-duty commitment.

d. DFAS letter dated 27 January 2017, reflective of the applicant's final notification of his requirement to repay his previously received ROTC educational assistance funds. The total balance owed reflects \$31,184.95.

e. Orders Number 221-030 dated 9 August 2021, reflective of the applicant being reassigned to Fort Hood, TX, with a reporting date of 16 January 2022.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition and available military records, the Board determined the applicant was disenrolled from the ROTC program due to a breach of contract based on his failure to maintain a minimum semester and cumulative grade point average of 2.0. The Board determined the applicant enlisted into the regular Army on 20 September 2016. The Board found the applicant had an obligation of 48 months as specified within his ROTC contract. The Board noted, the applicant has served a period of 4 years and is currently still serving on active duty. The Board agreed the applicant has met his service obligation for his ROTC contract and remission of debt associated with previously received Reserve Officers' Training Corps (ROTC)

scholarship funds and repayment of all previously collected funds is warranted. Based on this, the Board granted full relief.

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 by notifying DFAS that the applicant's debt in the amount of \$ 31,184.95 has been relieved that was established due to his military service and the applicant is entitled to repayment of all previously collected funds.

2/29/2024

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CHAIRPERSON

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 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. Paragraph 3-43 (Disenrollment) provides that a scholarship and non-scholarship cadet will be disenrolled if they fail to maintain a minimum semester or quarter cumulative academic Grade Point Average (GPA) of 2.0 on a 4.0 scale or higher if required by the school and at least a 3.0 on a 4.0 scale or equivalent semester or quarter and cumulative average in all ROTC courses. 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 Professor of Military Science, 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.

3. 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.
4. Title 10, USC, section 1552 states, the Secretary concerned may pay, from applicable current appropriations, a claim for the loss of pay, allowances, compensation, emoluments, or other pecuniary benefits, or for the repayment of a fine or forfeiture, if, as a result of correcting a record under this section, the amount is found to be due the claimant on account of his or another's service in the Army.

//NOTHING FOLLOWS//