

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230006808

APPLICANT REQUESTS: in effect, remission, cancellation, or waiver of Army Senior Reserve Officers' Training Corps (ROTC) Scholarship debt.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 19 July 2015

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:

a. He is requesting that the debt of \$22,972.69 with the additional "Penalty Admin Fee" of \$16,203.78 issued to him on 28 April 2023 be excused and erased from any records. He was told that the tuition paid to Pacific Lutheran University during his time with the ROTC program (2007-2009) would be absolved "in lieu of duty", with a commitment of three years of active duty service. To the best of his recollection, his enlistment contract also stated this, as he enlisted with Tuition Reimbursement instead of a cash bonus.

b. To fulfill this requirement, he enlisted into the Army in 2010, after leaving ROTC in the fall of 2009. He served honorably for five years before transitioning out in July 2015. He has since been a law enforcement officer in Washington State since 2015. During his time in the Army, he was assigned to the 2nd Ranger Battalion where his final position held was at the rank of sergeant (SGT)/E-5. In total, he served as an enlisted member of the United States Army for five years, to include four deployments. He received numerous awards and citations including a Bronze Star with Valor, and a Purple Heart. He fulfilled his contracted requirement to pay the Army back for his ROTC

debt from 2009. Being required to pay this amount would cause a hardship to him and his family.

c. After exiting ROTC and before he enlisted, he made two loan payments. After he enlisted, he contacted someone regarding future payments. He was advised to stop making payments because he had already enlisted, and the loan would be forgiven automatically after the three years of service. He ceased payments and continued with his service. He left the Army in 2015 and assumed the loan had been forgiven.

3. A review of the applicant's official records show the following:

a. On or about 26 August 2008, the applicant enlisted as a Cadet in the U.S. Army Reserve (USAR). In connection with his enlistment, he completed and signed DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract), which shows, in pertinent part:

(1) The applicant enrolled in the Pacific Lutheran University ROTC program and the Department of the Army agreed to pay scholarship benefits for a period of 2.5 academic years.

(2) Paragraph 5 (Terms of Disenrollment) states, he understood and agreed that once he became obligated and he was disenrolled from the ROTC program for breach of contractual terms or any other disenrollment criteria established now or in the future by Army Regulations (which include but are not limited to Army Regulation (AR) 145-1 (Senior ROTC Program, Organization, Administration and Training)), he was subject to the terms in paragraphs 5a through 5e below. In pertinent, the paragraphs state:

(a) Paragraph 5a (I Agree to Serve on Enlisted Active Duty) provides that, "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. If I am disenrolled after the point of obligation, I may be ordered to active duty for one of the periods listed in paragraph 6 below based upon the year during which my disenrollment was initiated."

(b) Paragraph 5b (I Agree to Reimburse the United States Government) provides that, "if I am offered the opportunity to repay my advanced educational assistance in lieu of being ordered to active duty, I will be required to reimburse the United States government through repayment of an amount of money, plus interest, equal to the entire amount of financial assistance (to include tuition, educational fees, books, laboratory expenses, and supplies) paid by the United States for my advanced education from the commencement of this contractual agreement to the date of my disenrollment or refusal to accept a commission. This amount includes any financial assistance I may have received prior to my obligation point."

b. On 4 March 2009, the applicant was notified that the Professor of Military Science (PMS) was initiating his disenrollment from the ROTC program under the provisions of AR 145-1, paragraph 3-43a(12) and (14), based on misconduct, demonstrated by disorderly or disrespectful conduct in the ROTC classroom or during training, or other misconduct that substantially interferes with the ROTC mission, including participation in unlawful demonstrations against the ROTC, illegal interference with rights of other ROTC students, or similar acts. Also, undesirable character demonstrated by cheating on examinations, stealing, unlawful possession, use, distribution, manufacture, sale (including attempts) of any controlled substance, as listed or defined in Title 21, USC, section 812, discreditable incidents with civil or university authorities, falsifying academic records or any other forms of academic dishonesty, failure to pay just debts, or similar acts. Such acts may also be characterized as misconduct.

(1) The PMS placed him on leave of absence pending disenrollment. Supporting documents for disenrollment action, e.g., transcript, counseling statements, etc.) were enclosed.

(2) The Army would determine whether to order the applicant to active duty or direct repayment of any scholarship funds he had received. If a scholarship cadet, he may have been called to enlisted active duty in an "enlisted grade of E-1" or required to repay scholarship benefits in the amount of \$19,600.00 in lieu of call to active duty in fulfillment of his contractual obligation. The applicant may have disputed that such a debt is owed by requesting a hearing.

c. On 5 March 2009, he responded to the notification and elected to waive his right to a hearing and decline a call to active duty within 60 days after completion of his current projected graduation date or upon withdrawal/dismissal from school, whichever occurred first. However, he elected to accept expeditious call to active duty in fulfillment of his contractual obligation. He understood he would normally be ordered to active duty within 30 days and this option was contingent on his eligibility for active duty.

d. On 20 October 2009, the applicant was notified he was disenrolled and discharged from the ROTC program under the provisions of AR 145-1, paragraph 3-43a(12) and (14), July 1996. Disenrollment was due to his misconduct as demonstrated by lying to Cadre members and discreditable incidents with university and civil authorities (threatening campus security officer, interfering with an investigation, and violation of campus policies), and his undesirable character as demonstrated by his use or possession of alcoholic beverages on campus.

e. On 1 November 2009, he responded to the disenrollment notification and elected to repay the total amount owed, \$22,268.86 in monthly installments, plus interest on the amount owed, as specified in his scholarship contract. The notice on the election form

states, "Your election of the repayment option and your subsequent enlistment in any branch of the Armed forces will not relieve you from this repayment obligation."

f. On 9 July 2010, the Defense Finance and Accounting Service (DFAS) notified the applicant that they were responsible for collecting a debt he owed to the Department of Defense. The DFAS debt and claims statement shows the debt was for ROTC education tuition assistance in the amount of \$22,268.86.

g. On 20 July 2010, the applicant enlisted in the Regular Army for a period of 5 years in the rank/grade of private first class/E-3. In connection with his enlistment, DA Form 3286 (Statement for Enlistment - U.S. Army Enlistment Program), Annex B shows he enlisted for training in military occupational specialty 18X (Special Forces Recruit).

h. Orders Number 174-06 published by Headquarters, 2nd Battalion, 75th Ranger Regiment, promoted the applicant to sergeant with an effective date of rank of 1 July 2014.

i. On 19 July 2015, he was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement). DD Form 214 also shows he completed 5 years of net active service. In pertinent part, item 11 (Primary Specialty) shows the entry "11B2V B4 Infantryman" - 4 years and 8 months, and item 18 (Remarks) shows he served in Afghanistan on four occasions.

j. Orders Number D-02-804854 published by the U.S. Army Human Resources Command, discharged the applicant from the USAR, effective 13 February 2018.

4. The applicant's records did not contain orders nor evidence showing he was ordered to active duty in lieu of paying his ROTC debt and he did not provide any evidence.

5. On 17 October 2023, in an email, DFAS responded to a request for information regarding the applicant's ROTC debt and stated, the applicant has a debt in the Out of Service debt system. The debt is for ROTC. The original debt amount was \$23,068.86. There has been \$16,672.70 added in interest, admin and penalty charges. The member has paid \$1,059.11 so far. He still owes \$38,682.45.

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 October 2009. Evidence shows the applicant he elected to accept expeditious call to active duty in fulfillment of his contractual obligation. The applicant entered active-duty July 2010, 9 months after his disenrollment. The Board noted the applicant has served 5 years of net active service as an infantryman and deployed to Afghanistan on four occasions. The applicant was honorably released from active duty and transferred to the U.S. Army Reserve (USAR) Control Group (Reinforcement), obtaining the rank of sergeant.

2. The Board agree, although the applicant was disenrolled from the Pacific Lutheran University ROTC program for misconduct. The Board determined the applicant has served honorably for a period of 5 years and met his obligation for entitlement to relief. Based on the preponderance of evidence the Board granted relief to waive the applicant's debt amount of \$38,682.45 associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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|---|---|---|----------------------|
| ■ | ■ | ■ | 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 \$38,682.45 has been relieved that was established due to his military service.

3/19/2024

X

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. 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 military occupational specialty 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.

e. Subsection (b) provides that, the Secretary concerned shall determine the period of active duty to be served by any person for advanced education assistance to be provided such person by an armed force, except that if the period of active duty required to be served is specified under another provision of law with respect to the advanced education assistance to be provided, the period specified in the agreement shall be the same as the period specified in such other provision of law.

3. AR 37-104-4 (Military Pay and Allowances Policy), provides the policies and provisions for entitlements and collections of pay and allowances of military personnel. Paragraph 31-2 (Recoupment) states recoupment applies to those individuals who have signed an agreement that contains recoupment provisions. Recoupment action will be taken at transition when the personnel and finance communities identify a Soldier or cadet as being eligible for recoupment action.

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

a. Paragraph 3-39 (Termination of scholarship and disenrollment) provides that, the Commanding General (CG), ROTC Cadet Command (ROTCCC) is the approving authority for termination and/or disenrollment of scholarship Cadets.

b. Paragraph 3-43a (Disenrollment) states, in pertinent part, a scholarship cadet may be disenrolled only by the CG, ROTCCC for:

(1) Misconduct, demonstrated by disorderly or disrespectful conduct in the ROTC classroom or during training, or other misconduct that substantially interferes with the ROTC mission, including participation in unlawful demonstrations against the ROTC, illegal interference with rights of other ROTC students, or similar acts.

(2) 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.

d. Paragraph 3-43e states, 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.

e. Paragraph 3-44a (Discharge and Separation from the USAR) provides that the CG, ROTCCC, 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.

f. Paragraph 3-44b provides that, upon disenrollment from the ROTC, a cadet assigned to Control Group (ROTC), who is not ordered to active duty or pending such an order and has previously completed a basic training course conducted by a U.S. Armed Force, will be transferred to the Individual Ready Reserve if the military service obligation has not been met. A cadet assigned to Control Group (ROTC) who is 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.

5. 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 Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. In accordance with the authority of Title 10 USC, section 7837, 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.

6. Department of Defense Instruction 1215.08 (SROTC Programs), paragraph 3.2.f(2)(Disenrollment Procedures) states, at the discretion of the Secretary of the Military Department concerned, disenrolled cadets and midshipmen may be ordered to active enlisted service. If not ordered to active enlisted service, disenrolled cadets and midshipmen may be required to reimburse the cost of educational assistance, as specified in their agreements, unless the Secretary of the Military Department concerned waives the reimbursement pursuant to Paragraph 3.2.f.(3) of this issuance. The Secretary of the Military Department concerned may remit or cancel any part of the indebtedness owed by a disenrolled cadet or midshipman to the United States.

7. AR 15–185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR). In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency.

//NOTHING FOLLOWS//