

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 1 March 2024

DOCKET NUMBER: AR20230007321

APPLICANT REQUESTS:

- remission of debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds
- a personal appearance before the Board

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 13 November 2017

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 his service on active duty was performed in lieu of his requirement to repay his ROTC scholarship debt. He contests that he was not notified of the debt while he was on active duty and was therefore under the assumption the debt was satisfied based upon his military service from 14 November 2012 to 13 November 2017.
3. On or about 17 October 2003, the applicant contracted with the U.S. Army Reserve (USAR) in coordination with his 3-year enrollment in the Embry Riddle Aeronautical University ROTC program.
4. On 28 January 2005, the applicant was notified that the Professor of Military Science (PMS) was initiating his disenrollment in accordance with Army Regulation (AR) 145-1 (Senior ROTC Program, Organization, Administration and Training), paragraph 3-43a (4) due to his withdrawal from Embry Riddle Aeronautical University. The applicant was placed on a leave of absence pending his disenrollment. He was advised if he was a

scholarship cadet, he may be called to active duty or required to repay scholarship benefits in the amount of \$28,500.00 in lieu of call to active duty in fulfillment of his contractual obligation. If eligible, the applicant could elect an expeditious call to active duty in order to satisfy the breach of contract.

5. On 9 February 2005, the applicant responded to the notification, waived his rights to a hearing and declined an expeditious call to active duty.
6. On 22 September 2005, the applicant was notified that the Director of Military Personnel Management ratified the validity of his scholarship debt (\$28,500.00) and determined that there was sufficient evidence to support recoupment.
7. On 7 November 2005, the applicant was disenrolled from the ROTC program.
8. On 14 November 2012, the applicant enlisted in the Regular Army for 5 years.
9. On 13 November 2017, the applicant was honorably released from active duty and transferred into the U.S. Army Reserve (USAR) Control Group (Reinforcement) after completing his required active service. DD Form 214, item 12c. (Net Active Service this Period) reflects 5 years.
10. On 17 November 2020, the U.S. Army Human Resources Command issued Orders Number D-11-024113 honorably discharging the applicant from the USAR, effective 17 November 2020.
12. On 3 October 2023, the Defense Finance and Accounting Service verified the applicant's ROTC (\$28,500.00) debt. At this time, the applicant has repaid a portion of the debt (\$16,903.65) with a remaining balance of \$34,470.46 due to accumulated interest and additional fees.

#### BOARD DISCUSSION:

1. The Board carefully reviewed and considered the application, all supporting documents, and the evidence found within the military record, to include the applicant's contentions, the military record, and regulatory guidance.
2. The applicant's request for a personal appearance hearing was carefully considered. However, in this case, the evidence of record and independent evidence provided by the applicant 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.

3. The evidence of record confirms, the applicant, was counseled in writing, that as an ROTC scholarship cadet, he may be called to active duty or be required to repay scholarship benefits in the amount of \$28,500.00 in lieu of call to active duty in fulfillment of his contractual obligation. He was further informed that if eligible, the applicant could elect an expeditious call to active duty in order to satisfy the breach of contract; however, he declined an expeditious call to active duty. On 14 November 2012, he enlisted in the regular Army in the rank/grade of specialist/ E-4, for a period of 5 years. On 13 November 2017, he was honorably released from active duty in the rank/grade of sergeant/E-5, after completing 5 years of net active service.

4. The Board majority found the applicant's enlistment and service on active duty served the same purpose as it would have had he been ordered to active duty in the U.S. Army. In other words, the Department of Defense received the benefit of his service. Additionally, he completed more than the required 4 years of service. Therefore, as a matter of equity, it would be appropriate to consider his enlistment in the Regular Army on to have met the active duty obligation required by his ROTC scholarship contract.

5. The Board minority found his subsequent enlistment did not satisfy the requirements of his scholarship contract because he had the option to immediately serve or pay back the money, and he chose to pay the money back. He enlisted in the regular Army later in the rank/grade of specialist (SPC)/E-4 and he received the GI Bill.

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:

- a. showing his 5-year enlistment from 4 November 2012 to 13 November 2017 satisfied the service obligation under the original terms of the applicant's ROTC contract as a U.S. Army enlisted Soldier, and.
- b. having DFAS review the records associated with his ROTC scholarship debt and based on the above records correction, returning any funds the applicant paid towards this 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. 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. Paragraph 3-43a.(4) (Disenrollment) provides that non-scholarship and scholarship cadets will be disenrolled if they withdraw or are dismissed from an academic institution.

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. 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 IRR 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.

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. 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.

5. AR 15-185 (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 that applicant's 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//