

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 March 2024

DOCKET NUMBER: AR20230008677

APPLICANT REQUESTS: in effect, remission or waiver of debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds.

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 12 December 2019
- Defense Finance and Accounting Service (DFAS) Debt and Claims statement, billing date 17 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 he is requesting termination of an education debt. He served honorably for seven years of active duty in lieu of repayment. The original notification was made at the end of 2013. His command helped submit the required paperwork. DFAS placed the account to service in lieu of repayment. A recent audit noticed there was no correction to his military record and reestablished the debt in which he was notified on 17 April 2023. Attached DFAS notification letter shows previous balance of zero.

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

a. On 29 August 2007, 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) He enrolled in the [REDACTED] Institute of Technology ROTC program and the Department of the Army agreed to pay scholarship benefits for a period of 4 academic years.

(2) He agreed to maintain eligibility for enrollment and retention in ROTC and commission, as defined by statute, Army Regulation (AR), and this contract, throughout the period of the contract. He agreed to maintain the Army Physical Fitness Test (APFT) standards and the screening weight or body fat percentage required by the Army Weight Control Program (AWCP) as required of active duty Soldiers each year. These would be continuous requirements that he must continue to meet.

b. His ROTC disenrollment packet contains multiple counseling's related to APFT and AWCP standards. DA Forms 4856 (Developmental Counseling Form) show, in pertinent part, he understood that probation, administrative suspension, or scholarship termination/disenrollment action was appropriate when he failed to meet APFT and AWCP standards. DA Forms 705 (APFT Scorecard) shows he failed the APFT on multiple occasions. Likewise, DA Forms 5500 Body Fat Content Worksheet (Male) shows he failed to meet height/weight standards on multiple occasions. He was also counseled for failing to maintain a 2.0 grade point average, which resulted in academic suspension.

c. On 28 September 2009, the applicant was notified that the Professor of Military Science (PMS) was initiating his disenrollment in accordance with AR 145-1 (Senior ROTC Program, Organization, Administration and Training), paragraph 3-43a(8), based on his failure to meet the same requirements of the AWCP and the APFT as required of active duty Soldiers. The applicant was therefore in breach of his ROTC contract and was placed on a leave of absence pending his disenrollment. He was further advised if he was a scholarship cadet, he may be called to enlisted active duty in an enlisted grade of "E-1" or required to repay scholarship benefits in the amount of \$37,382.00 in lieu of call to active duty in fulfillment of his contractual obligation. If eligible, the applicant could choose an expeditious call to enlisted active duty in order to satisfy the breach of contract. If he elected this option, he would normally be ordered to active duty with 30 days of disenrollment.

d. On 5 October 2009, the applicant responded to the notification and elected to request a hearing so that he may personally appear and respond regarding his disenrollment and/or, if a scholarship cadet, respond to the amount or validity of the debt. He declined a call to active duty within 60 days after completion of his current projected graduation date or upon withdrawal/dismissal from school, whichever occurs first, and elected to "decline expeditious call to active duty (Special Active Duty Provision)."

e. On 2 February 2010, the applicant was notified that a board of officers/investigating officer (IO) had been appointed to hear and determine his suitability for retention in the Army ROTC Program. The specific matters to be investigated were:

- whether he entered into a valid Army Senior ROTC Scholarship Cadet Contract, of his own volition
- if he received advanced educational assistance from the U.S. Government in the form of scholarship benefits while enrolled in ROTC in the amount of \$37,382.00, which constitute a valid debt to the United States
- whether there are grounds for his disenrollment in accordance with AR 145-1, paragraph 3-43a(8), failure to meet the same requirements of the AWCP and AFPT as required of active duty Soldiers
- if he should repay his debt in the amount of \$37,382.00 or be ordered to enlist active duty

f. On 1 March 2010, DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) shows the IO completed findings and recommendations.

(1) The IO found that the applicant entered into a valid Army Senior ROTC contract; received advanced educational assistance in the form of ROTC scholarship monies from the U.S. Government in the amount of \$37,382.00 and it constituted a valid debt; and he failed to complete the requirement(s) of the ROTC Cadet contract. The applicant failed to meet the requirements of the AWCP and failed to pass 9 of the 17 APFTs he was tested for as a contracted Cadet. He also failed 5 of the 11 times he completed height and weight during his tenure as a contracted Cadet.

(2) The IO recommended the applicant should:

- not be retained in ROTC as a scholarship or non-scholarship Cadet
- be disenrolled from the ROTC under the provisions of AR 145-1, paragraph 3-343(a)
- "NOT be ordered to active duty in an enlistment status"
- be ordered to repay his valid debt to the U.S. Government

g. On 4 March 2010, the applicant acknowledged receipt of the entire copy of the Disenrollment Board Proceedings.

h. On 18 March 2010, he submitted a rebuttal of the board proceedings and stated in part, he was only counseled 4 times of 11 counseling statements, he was never given formal ways to lose weight and was never placed into a weight control program.

i. On 7 October 2010, the Attorney Advisor determined the proceedings to be legally sufficient to support disenrolling the applicant under the provisions of AR 145-1, paragraph 3-43a(16) for failing to meet Army APFT standards. Although the applicant also failed height/weight standards, he cannot be disenrolled on that basis since the command did place him on a weight control program as required by Cadet Command Pamphlet 145-4 (Enrollment, Retention, and Disenrollment Criteria, Policy, and Procedures). The Attorney Advisor concurred that repayment would be an appropriate resolution of this case.

j. On 4 November 2010, the applicant was notified he was disenrolled and discharged from the ROTC program under the provisions of AR 145-1, paragraph 3-43a(16), July 1996. Disenrollment was due to breach of the ROTC contract based on his failure to maintain APFT standards.

k. On 20 November 2012, the Office of the Deputy Chief of Staff, G-1 [Pentagon], Assistant Deputy Chief of Staff considered the applicant's appeal and found the debt to be valid and directed he be ordered to repay educational expenses in the amount of \$37,382.00 with interest if applicable.

l. On 2 January 2013, the applicant enlisted in the Regular Army in the rank/grade of private first class/E-3 for a period of 4 years and 19 weeks. He reenlisted on 26 February 2016 and 13 December 2017.

m. On 12 December 2019, he was honorably released from active duty and transferred to the USAR Control Group (Reinforcement). DD Form 214 also shows he completed 6 years, 11 months, and 11 days. Item 18 (Remarks) shows he served in Afghanistan from 27 February to 11 November 2014 and 21 September 2017 to 24 January 2018.

n. Orders Number D-01-100188 published by the U.S. Army Human Resources Command honorably discharged the applicant from the USAR, effective 5 January 2021.

o. 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.

4. The applicant provides a DFAS Debt and Claims statement with a billing date of 17 April 2023, which shows payments received in the amount of \$6,325.09 and a total balance due of \$31,078.98.

5. On 9 November 2023, the Office of the Deputy Chief Staff G-1, Chief, Military Pay Branch provided an advisory opinion for this case and recommended approval of the applicant's request. The advisory official states:

a. Based on a careful review of contract and supporting documents, we recommend the Board approve the applicant's application for administrative relief for the education debt.

b. Per Department of Defense Financial Management Regulation, the applicant is required to complete at least four years of active-duty time in lieu of paying the education debt. The DD Form 214 provided in the application verifies he fulfilled the required time on active duty; therefore, the Board should approve his request for administrative relief.

6. On 28 December 2023, by email, the applicant responded to the G-1 advisory opinion and asked the questions, is there an estimate on a timeline going forward for a final decision? And he assumes he continues to make payments according to the payment plan as scheduled until he receives an official decision?

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, available military record, and Office of the Deputy Chief Staff G-1, Chief, Military Pay Branch advisory opinion, the Board concurred with the advising official recommendation for approved relief. The Board recognized the applicant is required to complete at least four years of active-duty time in lieu of paying the education debt. Evidence shows the applicant served 6 years, 11 months, and 11 days. Additionally, the applicant served in Afghanistan from 27 February to 11 November 2014 and 21 September 2017 to 24 January 2018.

2. The Board agree, although the applicant was disenrolled from the [REDACTED] Institute of Technology ROTC program for failure to meet height/weight standards on multiple occasions. As well as counseled for failing to maintain a 2.0 grade point average, which resulted in academic suspension. The Board determined the applicant has served honorably for a period of 6 years and met his obligation for entitlement to relief. Based on the opine and preponderance of evidence the Board granted relief to waive the applicant's debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds.

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 \$\$31,078.98 has been relieved that was established due to his military service.

3/19/2024

X █

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. 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) Failure to meet the same

requirements of the Army Weight Control Program and the Army Physical Fitness test as required of active duty Soldiers prior to the end of the last school term of the MS III year. (2) Breach of contract. (Note: Breach 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).

c. Paragraph 3-43b states, a board of officers will be appointed by the Professor of Military Science (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. Additionally, in cases where a board of officers is not appointed, the PMS will appoint an investigating officer to inquire into the case of any scholarship or advanced course cadet being considered for disenrollment.

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 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//