

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 April 2024

DOCKET NUMBER: AR20230010785

APPLICANT REQUESTS: remission of his Reserve Officers' Training Corps (ROTC) debt.

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

- DD Form 149 (Application for Correction of Military Record)
- Enlisted Record Brief (ERB)
- May 2023 Leave and Earnings Statement (LES)
- Soldier Talent Profile

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 has an out-of-service education debt incurred through losing his ROTC scholarship. He is serving on active duty in lieu of repaying the debt. The service obligation for this debt to be waived was four years, which was completed in February 2020. The applicant is still on active duty and has met the terms of his service obligation.
3. The applicant provides the following documents:
 - a. LES, 1-31 May 2023, which shows he is in the grade of E-5, his entitlements, deductions, and allotments. The LES does not show his ROTC debt.
 - b. Document entitled Soldier Talent Profile, which shows his experience, knowledge, skills, and service data. The entire document is available for the Board's consideration.
4. The applicant's service record contains the following documents:

a. George Mason University Bachelor of Arts History degree certificate, dated 16 May 2015.

b. Memorandum Disenrollment and Instructions for Order to Active Duty, dated 10 August 2015 states the applicant was disenrolled and would be discharged from the ROTC program for breach of contract. [The specific reason for the disenrollment is not mentioned] Since the applicant requested to be ordered to active duty in fulfillment of his contract, he was ordered to active duty as a private/E-1. In the event the applicant was determined to be ineligible to complete his active duty service obligation of 48 month, he would be required to repay the cost of advanced education assistance. A debt in the amount of \$33,666.50 would be established.

c. Orders 226-001, published by Headquarters, United States Army Cadet Command and Fort Knox, dated 10 August 2015 ordered the applicant to active duty. His reporting date was 19 October 2015 with early reporting authorized. His active duty commitment was 48 months. Recoupment of scholarship financial assistance received (\$33,666.50) applied if the service obligation was not fulfilled or if the applicant failed to meet the standards for accession, to include the physical standards.

d. Orders 349-1, published by George Mason University Army ROTC, dated 15 December 2015 discharged the applicant from U.S. Army Reserve Control Group (ROTC) effective 10 August 2015. The authority for discharge was Army Regulation (AR) 145-1 (Senior ROTC Program), paragraph 3-43a(16).

e. DD Forms 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in the Regular Army on 16 February 2016 in the grade of specialist (SPC)/E-4. He reenlisted in the Regular Army on 15 January 2020 and 24 August 2022.

f. ERB, dated 22 November 2022, shows the applicant's current assignment is at Fort Gordon, GA. His basic active service date and pay entry basic date is 16 February 2016 and his expiration term of service date is 23 August 2025.

g. The applicant's service record was void of his original ROTC scholarship.

5. On 20 March 2024, Defense Finance Accounting Service (DFAS), responded to a request by the analyst of record concerning the applicant's debt. DFAS states the applicant's original debt was \$34,099.66. There was interest, administrative, and penalty fees of \$15,194.89 added to the debt. The balance of the debt and what the applicant currently owes is \$49,244.55.

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. He was disenrolled from the ROTC program and he was subsequently found in breach of his ROTC contract. He was advised of his rights. He elected to serve on active duty. The CG approved the disenrollment including the applicant's call to active duty. He was separated in December 2015.

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. The applicant enlisted in the Regular Army for 4 years on 16 February 2016 in pay grade E-4 and followed that with a reenlistment on 15 January 2020. Notwithstanding the fact that he enlisted at a higher pay grade, the Board determined his enlistment in the Regular Army has met the active duty obligation required by his ROTC scholarship contract and satisfies the terms of his ROTC contract.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	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 December 2016. In the event that he received an enlistment bonus (with his initial enlistment in December 2016), that bonus payment should be recouped to offset an equal portion of his ROTC scholarship debt.

[REDACTED]

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, U.S. Code, 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. 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)(16) Breach of contract (including formerly uses term willful evasion) 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. 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.

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//