

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 May 2024

DOCKET NUMBER: AR20230011477

APPLICANT REQUESTS: in effect, remission, cancellation, 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)
- DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract), 28 February 2008
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 November 2016

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 she elected to serve on active duty in lieu of repayment of her student loan but it has not been updated that she completed her active-duty obligation. She is requesting termination of the debt.

3. A review of the applicant's official record shows the following:

a. She enlisted in the U.S. Army Reserve (USAR) for 8 years on 11 July 2006. In connection with her enlistment Reserves Annex (Certificate and Acknowledgement USAR Service Requirements and Methods of Fulfillment) shows she enlisted for military occupational specialty (MOS) 96B (Intelligence Analyst) and was authorized the following entitlements:

- Montgomery GI Bill Kicker (\$100.00 per month for 36 academic months)
- Non-Prior Service Enlistment Bonus (\$3,000.00)
- Student Loan Repayment Program ((\$10,000.00)

b. DD Form 214 shows she entered active duty on 31 May 2007 to attend Initial Active Duty for Training (IADT) and was released from IADT and transferred to her USAR unit in Wichita, KS, on 18 December 2007. She was awarded MOS 35F10 (Intelligence Analyst) and completed 6 months and 18 days of net active service this period.

c. On 28 February 2008, the applicant completed and signed DA Form 597-3, which shows she enrolled in the Wentworth Military Academy and Junior College ROTC program and the Department of the Army agreed to pay scholarship benefits for a period of 2 academic years. In pertinent part, the form states:

(1) She agreed to remain a full-time student in good standing at the educational institution named above until she received her degree. A full-time student is defined as one enrolled in sufficient academic courses to obtain sophomore, junior, and senior academic status at the end of each appropriate one-academic-year increment for the duration of the scholarship. This includes the required Army ROTC classes, which may be part of or in addition to those courses required for her degree. If she desired to transfer to another institution or take a leave of absence from the continuous performance of this contract, she agreed to obtain prior written approval from the Professor of Military Science (PMS).

(2) She understood and agreed that she would incur an active duty and/or reimbursement obligation after the first day of her MS II year (sophomore year) if she was a three-, four- or five-year scholarship recipient; after the first day of her MS III year (junior year) if she was a two-year scholarship recipient; or after the first day of her MS IV year (senior year) if she was a one-year or less scholarship recipient.

(3) She agreed to accept an appointment, if offered, as a commissioned officer in the USAR or Army National Guard (ARNG) of the United States (ARNGUS), in accordance with governing Army Regulations (AR). She understood that upon appointment, she would incur a total military service obligation not to exceed eight (8) years and cannot resign such appointment before completion; however, this obligation may be met in a variety of ways as outlined below. She further understood that active duty service may include worldwide assignment and assignment that involves combat or exposure to nuclear, chemical, or biological weapons.

(4) Under the terms of this contract, the Secretary of the Army or his or her designee, may order her to active duty as an enlisted Soldier, if she was qualified, for a period of not more than four (4) years if she failed to complete the ROTC program. If she was disenrolled after the point of obligation, she may be ordered to active duty for one of the periods listed in paragraph 6 below based upon the year during which her disenrollment was initiated."

(5) "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."

(6) "If I am disenrolled from ROTC, I understand the Secretary of the Army, or his or her designee, retains the prerogative to either order me to active duty or order monetary repayment of my scholarship benefits. Therefore, if I am required to repay my advanced educational assistance under the terms of this contract, my subsequent enlistment in an Armed Service will not relieve me from my repayment obligation."

d. On 24 January 2009, DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States) shows the applicant enlisted in [REDACTED] ARNG in the rank/grade of sergeant (SGT)/E-5 for a period of 5 years, 5 months, and 27 days.

e. On 16 December 2009, the Wentworth Military Academy and College, PMS notified the applicant that he was initiating her disenrollment from the ROTC program under the provisions of AR 145-1 (Senior ROTC Program, Organization, Administration and Training), paragraph 3-43a(16), based on her breach of contract for refusing an appointment as a second lieutenant (2LT) in the USAR. The applicant was placed on a leave of absence pending disenrollment. The PMS further advised the applicant that if she was a scholarship cadet, she may be called to enlisted active duty in an enlisted grade of "E-1" or required to repay scholarship benefits in the amount of \$37,847.50 in lieu of call to active duty in fulfillment of her contractual obligation. If she was a Simultaneous Membership Program (SMP) participant, she would be released to her unit to satisfy her remaining contractual military service obligation; and, if she was a scholarship cadet, she would be required to repay scholarship benefits expended on her behalf in the amount stated above. If eligible, the applicant may have elected to complete her current baccalaureate degree in the school she was currently in and then serve on enlisted active duty to fulfill her contractual obligation. If she chose this option, she would be ordered to enlisted active duty within 60 days after she would normally complete baccalaureate degree requirements, or withdrawal/dismissal from school, whichever occurred first.

f. On 16 December 2009, she responded to the notification and elected to:

(1) Waive her right to a hearing and acknowledged that the amount and validity of her debt as stated in the disenrollment notification was correct. She understood that by waiving this right, she waived the opportunity to present matters regarding disenrollment and the amount or validity of her indebtedness before a board or

investigating officer. Additionally, she waived her right to appeal the disenrollment and/or the amount or validity of the debt.

(2) Accept call to active duty within 60 days after completion of her current projected graduation date or upon withdrawal/dismissal from school, in fulfillment of her contractual obligation. The applicant understood this option was contingent on her eligibility for active duty.

g. On 18 May 2010, the Headquarters, U.S. Army Cadet Command (USACC), Commanding General notified the applicant that:

(1) She was disenrolled and would be 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 the applicant's refusal to accept an appointment as a 2LT in the USAR.

(2) Since the applicant was a member of the ARNG under the SMP, she would be released to her unit to fulfill the remainder of her military service obligation. In addition to being released to her ARNG unit, when the ROTC scholarship contract is breached, any obligation to the Army must be satisfied by repaying the cost of advanced educational assistance provided by the Army. The debt amount listed on the disenrollment notification as \$37,847.50 is incorrect. The correct amount of monies spent in support of the applicant's education is \$37,822.50. A U.S. Army Advanced Education Financial Assistance Record (DA Form 5315-E) detailing the debt is enclosed.

h. On 25 May 2010, the applicant elected and promised to repay the total amount owed, \$37,822.50, in monthly installments, plus interest on the amount owed, as specified in her scholarship contract; i.e., "I agree that if the money I owe to the United States is not paid in a lump sum on the date that I am notified it is due, it shall bear interest at the rate equal to the highest rate being paid by the United States on securities having maturity dates of 90 days or less, and shall accrue from the day that I am first notified of the amount I owe to the United States." She understood that the Defense Finance and Accounting Service (DFAS)-Denver Center would provide her a repayment schedule to liquidate her debt. The Scholarship Contractual Agreement notice 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."

i. On 1 June 2010, the USACC, Chief, Cadet Actions and Standards Division, submitted a requested to have the applicant's cadet case processed for establishment of debt with DFAS- [REDACTED].

j. On 16 June 2010, the Land Component, Joint Force Headquarters [REDACTED] published Orders Number 167-713, which reduced the applicant from the rank/grade of SGT/E-5 to private first class (PFC)/E-3, effective 15 June 2010. The authority on the orders is shown as AR 600-8-19 (Enlisted Promotions and Reductions), paragraph 10-21a, for USAR and ARNG SMP participants who withdraw or are eliminated from the ROTC Advanced Course.

k. NGB Form 22 (Report of Separation and Record of Service) shows she was honorably discharged from the [REDACTED] ARNG for enlistment in the Regular Army on 3 November 2010. She completed 1 year, 9 months, and 10 days net service this period.

l. On 4 November 2010, she enlisted in the Regular Army in the rank/grade of PFC/E-3 for a period of 6 years.

m. On 26 November 2010, a DFAS Debt and Claims account statement shows the applicant owed an account balance of \$37,822.50 with a payment due in the amount of \$1,053.22.

n. On 3 November 2016, she was honorably discharged from the Regular Army by reason of physical standards. DD Form 214 shows she completed 6 years net active service this period with 6 months and 21 days total prior active service.

4. On 24 January 2024, the DFAS, Supervisor, Correction of Records/Claims, Debt and Claims Management, responded to a request for information from the Army Review Boards Agency, Case Management Division, pertaining to the applicant's ROTC debt and stated, according to the applicant's Master Military Pay Account (MMPA), she has completed her active-duty service obligation. Per her pay records, she served as an active duty enlisted Soldier from "101104-161103" [4 November 2010 to 3 November 2016].

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. Evidence in the records show the applicant's disenrollment from the ROTC program under the regulatory guidance provisions of, paragraph 3-43a(16), based on her breach of contract for refusing an appointment as a second lieutenant (2LT) in the USAR. Upon review of the applicant's petition and available military records, the Board

determined the applicant enlisted into the regular army on 4 November 2010 in the rank/grade of PFC/E-3 for a period of 6 years.

2. The Board noted the applicant was honorably discharged from the Regular Army by reason of physical standards. The applicant's DD Form 214 shows she completed 6 years net active service this period with 6 months and 21 days total prior active service. The Board agreed remission, cancellation, or waiver of debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds is warranted. Therefore, the Board granted 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 remission, cancellation, or waiver of debt associated with previously received Reserve Officers' Training Corps (ROTC) scholarship funds has been relieved that was established due to her military service.

5/15/2024

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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. AR 15-185 (ABCMR), states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. It will decide cases based on the evidence of record and it is not an investigative body. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
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 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.
4. 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.

5. AR 145-1 (Senior ROTC Program: Organization, Administration, and Training) prescribes policies and general procedures for administering the Army's Senior ROTC Program. Paragraph 3-43a(16) states, a non-scholarship cadet may be disenrolled by the PMS. A scholarship cadet may be disenrolled only by the Commanding General, U.S. Army ROTC Cadet Command. Disenrollment authority does not include the discharge authority for SMP participants. Non-scholarship and scholarship cadets will be disenrolled for breach of contract (including formerly used term willful evasion). 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.

6. 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.

7. 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.

8. AR 600-8-19 (Enlisted Promotions and Reductions) prescribes the enlisted promotions and reductions function of the military personnel system. Paragraph 10-21 (Other reasons for reduction) states, the following are reasons for reduction in rank without board action or appeal. The applicable component is as indicated. For USAR and ARNG SMP participants who withdraw or are eliminated from the ROTC Advanced Course. These participants will be reduced to the grade held on the day before appointment to cadet status or to the grade to which the Soldier would be entitled if enlisting under the provisions of the ARNG Enlistment criteria, but not below PV2.

//NOTHING FOLLOWS//