

IN THE CASE OF: [REDACTED]

BOARD DATE: 2 May 2024

DOCKET NUMBER: AR20230011911

APPLICANT REQUESTS:

- cancellation or remission of his Reserve Officers' Training Corps (ROTC) scholarship indebtedness in the amount of \$16,800.00
- a personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- Legal Brief from Counsel
- [REDACTED] University Memorandum, Subject: Notification of Respondent to a Board of Officers/Investigation Officer to the applicant
- [REDACTED] University Memorandum, Subject: Notification of University Representative – Determination of Suitability for Retention in the Army to [REDACTED]
- ROTC Cadet (CDT) Command (CMD) Form 67-10-1 (Cadet Officer Evaluation Report)
- DD Form 4 (Enlistment/Reenlistment Document Armed Forces of the United States)
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from unknown person
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- Character reference from [REDACTED]
- DA Form 4856 (Developmental Counseling Form) 31 March 2016

- DA Form 4856, November 2015
- DA Form 4856, 25 September 2016
- [REDACTED] University letter, 13 September 2016
- [REDACTED] University letter, 22 January 2016
- National Society of Scabbard and Blade certificate
- The Military Order of the World Wars ROTC Award of Merit certificate, 13 March 2015
- The Military Orders of the World Wars ROTC Award of Merit certificate, 25 March 2016
- Sergeant (SGT) York Award certificate
- Jack Wolfson Scholarship certificate
- Superior Cadet Award certificate
- ROTC Advanced Camp Certificate of Training
- DA Form 4856, 13 February 2019
- District Court [REDACTED] County State [REDACTED] [REDACTED] Motion to Expunge, 20 December 2017
- District Court [REDACTED] County State of [REDACTED] Order Expunging, 20 December 2017
- District Court [REDACTED] County State of [REDACTED] Motion to Expunge, 26 June 2017
- District Court [REDACTED] County State of [REDACTED] Order Withdrawing and Expunging Plea, 26 June 2017
- Defense Finance and Accounting Service (DFAS) letter
- U.S. Army CDT CMD (USACC) letter
- Applicant's letter to DFAS
- [REDACTED] University School of Liberal Arts, Department of History and Government letter
- DA Form 4856, 21 November 2017
- Email to [REDACTED]
- Email to [REDACTED]
- ROTC Department of Military Science, University of [REDACTED], Subject: Investigation Executive Summary
- DA Form 1574-2 (Report of Proceedings by Board of Officers)
- Character Reference from [REDACTED]
- DA Form 4856, 20 November 2017
- Headquarters (HQs), USACC, 5th Brigade Memorandum for Record (MFR), Subject: Notification of Personal Service – CDT [REDACTED] (the applicant), 5 April 2019
- HQs, USACC, 5th Brigade MFR, Subject: Notification of Personal Service – CDT [REDACTED] (the applicant), 13 February 2019
- HQs, USACC, 5th Brigade MFR, Subject: Waiver of Board Notification

- HQs, USACC, 5th Brigade Memorandum, Subject: Appointment of a Formal Board of Officers/Investigating Officer to Determine Suitability for Retention in the Army ROTC Program and Amount and Validity of Scholarship Debt
- Letter from the applicant to unknown person(s)
- National Personnel Records Center letter
- DD Form 785 (Record of Disenrollment from Officer Candidate Type Training)
- Occupational Physical Assessment Test (OPAT) Scorecard
- HQs, USACC and Fort Knox, Memorandum, Subject: Disenrollment from the U.S. Army ROTC Program
- DA Form 3881 (Rights Warning Procedures/Waiver Certificate), 10 April 2018
- DA Form 3881, 20 November 2017
- [REDACTED] University Army ROTC Memorandum, Subject: Report of Investigation (Findings) of Formal Board of Investigating Officer to Determine the Suitability for Retention in the Army ROTC Program and Amount and Validity of Scholarship Debt
- [REDACTED] University, Student Wellness Center letter
- HQs, USACC, 5th Brigade Memorandum, Subject: Cadet [REDACTED] Integrity Violation
- HQs, USACC, 5th Brigade MFR, Subject: Notification of Personal Service – CDT [REDACTED] (the applicant), 16 May 2018
- [REDACTED] University Memorandum, Subject: Rebuttal of Findings and Recommendations of Investigation/Board Proceedings

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 through counsel, in effect, he requests the remission and complete removal of his ROTC indebtedness due to his disenrollment from the program. He believes he is entitled to the remission of this indebtedness due to the circumstances of his disenrollment which he believes the process was unfair and procedurally in error.
3. A review of the applicant's service record shows:
 - a. On 15 August 2015, the applicant enlisted in the U.S. Army Reserve (USAR) as a cadet and was assigned to the USAR Control Group (ROTC).
 - b. On 15 August 2016, the applicant signed DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) which stated in:

(1) Part I (Agreement of the Department of the Army), the Army agreed to pay three academic years in the form of full tuition and fees and \$1,200.00 for books and laboratory expenses.

(2) Part II (Agreement of Scholarship Cadet Contracting in the Senior ROTC Program), the applicant agreed as a ROTC scholarship cadet he met all eligibility criteria for contracting in the ROTC program and commissioning. If he was ineligible for contracting in the ROTC program, he would obtain an approved waiver before executing the contract. Failure to have disclosed or to disclose any disqualifying condition will subject him to disenrollment from the ROTC program and possible recoupment of scholarship benefits. He understood and agreed that he would incur an active duty and/or reimbursement obligation. He acknowledged the eligibility requirements pertaining to the enrollment in the ROTC, enlistment in the USAR or Army National Guard, and accepting a commission as an officer, and he understood those requirements. He agreed to maintain his eligibility to participate in the ROTC at all times.

c. [REDACTED] Police Department Arrest Report shows on 10 December 2016, the applicant was arrested for possession of a firearm while intoxicated, marijuana, and speeding. The report stated the police officer came into contact with the applicant who was driving a motor vehicle over the speed limit. The officer noticed a strong odor of an alcoholic beverage about the applicant and he admitted to drinking a beer. A white baggie was observed in the center console of the vehicle with had the odor of unsmoked marijuana. The applicant denied knowing drugs were in the vehicle and he was detained. The vehicle was searched and a loaded firearm was located in the glove compartment. The applicant was placed under arrest.

d. On 24 January 2017, the applicant entered a plea of guilty agreement for transporting a loaded firearm and speeding. The charge of marijuana was dismissed. He was sentenced to 1-year deferred, \$350.00 fine for transporting a loaded firearm and a statutory fine for speeding.

e. On 20 December 2017, the applicant's attorney made a motion to expunge the charge of possession of marijuana, case information and any related court documents from the record as the charge was dismissed. The judge ordered the court file including the information and any related court documents be expunged from the record.

f. On 26 June 2017, the applicant's attorney made a motion to expunge the plea of guilty and sentence received of 1-year deferred which was modified and reduced on 22 June 2017 to 5-months as the applicant complied with the terms and conditions of the deferred sentence and that said charge should be dismissed with prejudice. The applicant requested the case be dismissed with prejudice and the finding of guilty be expunged. The court found all conditions of the deferred judgment and sentence had

been satisfied, all fines, costs and monetary assessments had been paid as ordered. The court further found the applicant should be discharged without a court judgement of guilty and the plea of guilty or nolo contender shall be expunged from the record and the charge should be dismissed with prejudice.

g. On 30 July 2018, Army Directive 2018-12 (New Policy Regarding Waivers for Appointment and Enlistment Applicants) was released which stated in paragraph 4 a conduct waiver is required when the final finding of a court or of another adjudicating authority is a conviction or other adverse adjudication of any of the following: one major misconduct offense, two misconduct offenses, or a pattern of misconduct. Army policy with respect to all conduct waivers not referenced in this directive remains unchanged. For all waiver requests, the applicant must display sufficient mitigating circumstances that clearly justify approving the waiver.

h. On 13 February 2019, the applicant was notified of the initiation of his disenrollment from the ROTC program based on his inability to obtain a required civil conviction waiver which barred him from appointment as a commissioned officer which was a breach of his ROTC contract. The applicant acknowledged notification of the initiation of disenrollment.

i. On 13 February 2019, HQs, USACC, 5th Brigade, Human Resources Assistant personally served the applicant the notification of disenrollment from the ROTC program and appellate rights of scholarship and the applicant acknowledged the notification.

j. On 20 February 2019, the applicant declined a delayed or expedited call to active duty to fulfill his contractual obligation in the event the disenrollment was approved. If he was unqualified for enlistment, he would be required to repay the full amount of his indebtedness to the U.S. Government plus applicable accrued interest. He could not enlist in the Armed Forces until he was properly released from ROTC cadet status.

k. On 21 February 2019, the Professor of Military Science (PMS) stated he did not support a civil conviction waiver for the applicant. On 16 October 2016, the applicant was arrested by the [REDACTED] Police Department and was charged with the possession of a firearm while intoxicated, speeding and the possession of marijuana. In an agreement with the [REDACTED] County District Attorney, the applicant received a 1-year deferred sentence on 24 January 2017. In accordance with USACC Pamphlet 145-4, paragraph 2-36a (4) a, an arrest for these offenses required a civil conviction waiver and without said waiver, the applicant did not meet the commissioning requirements. The applicant's performance, understanding of officership responsibilities and potential placed him in the bottom 10 percent of the group. His conduct, which required the commissioning waiver was in and of itself reason enough not to commission him. He did not appear to comprehend the magnitude of his actions.

l. On 4 April 2019, the president of the Board of Officers/Investigating Officer notified the applicant of the hearing to determine if he breached the terms of his ROTC contract and his suitability for retention in the ROTC program. The board would examine whether the evidence reasonably established the following factors and make recommendations regarding:

- if a valid contract existed between the Army and the applicant
- if the applicant breached any terms of his contract and if so, how
- if the applicant received advanced educational assistance while enrolled in the ROTC program in the amount of \$16,800.00
- if there were grounds for disenrollment
- if there should be recoupment of indebtedness in the amount of \$16,800.00
- if recoupment via repayment was appropriate vice enlisted active duty, if applicant should repay whole or partial forgiveness of the debt, if partial forgiveness; how much and why

m. On 5 April 2019, HQs, USACC, 5th Brigade, Human Resources Assistant personally served the applicant the notification of respondent to a Board of Officers/Investigating Officer and the applicant acknowledged the notification.

n. On 23 April 2019, the Board of Officers convened which was adjourned on 25 April 2019, the board found the applicant received advanced educational assistance in the form of ROTC scholarships in the amount of \$16,800.00. He did not breach the terms of his ROTC contract at the time he signed it and he met all eligibility criteria. He did disclose his civil convictions to the ROTC program. His ability to obtain a civil conviction waiver does not constitute a breach of contract by the wording of the cadet contract as he signed it, but it does make him ineligible. The board recommended that he not be required to repay the Army the indebtedness in the amount of \$16,800.00, be disenrolled from the ROTC program as a lack of civil conviction waiver as a condition existing that barred his appointment as a commissioned officer and be released from his ROTC contractual obligation as he did not breach his contract. He should not be ordered to active duty in an enlisted status for 4-years. The severity of the conviction would not influence either the USACC or Department of the Army to disapprove a civil conviction waiver for transporting a loaded firearm. The only justification for denying a waiver was the PMS's reluctance to submit one, based on the evidence available.

o. On 22 May 2019, the applicant was notified of the findings and recommendations of the Board of Officers and was informed he had 10-days from the date of notification to submit a rebuttal. On 7 June 2019, the applicant acknowledged the notification.

p. On 29 May 2019, the applicant submitted a rebuttal which he asserted there had been an improper combining of regulations governing the commissioning requirements and those of the ROTC program enrollment. He believed the civil conviction waiver was

a requirement for ROTC enrollment and not a condition that barred his appointment as an officer after he was enrolled. There is no evidence his conviction required his disenrollment once enrolled. The regulation does state it was required of prospective cadets to obtain a civil conviction waiver prior to enrollment in ROTC. The fact he attended advanced camp after his conviction with the apparent blessing of the Army was proof of his interpretation of the regulation. He humbly requested he be recommended for retention in the ROTC program or at very least not be required to repay the educational assistance debt. He did not breach his ROTC contract as determined by the president of the board for failure to obtain a civil conviction waiver. The waiver is only for enrollment in ROTC not continued participation. However, if it was determined he breached his contract, it does not automatically mean he must repay the scholarship benefits. He finds the approving authority's interpretation to be unfair and frankly harsh as it takes the issue completely out of his hands and subjects him to the sole mercy of the battalion commander which was biased and clearly did not want him in the battalion.

q. On 20 September 2019, the commander of HQs, 5th Brigade, USACC recommended the recoupment of scholarship funds. He did not support the board's recommendation to waive the applicant's debt and to release him from his obligation for failure to obtain a civil conviction waiver which was a fact or condition that barred him from commissioning which was the basis for the disenrollment. The PMS did not support the request for a waiver based on the applicant's character and overall performance.

r. On 25 September 2019, the approving authority approved the findings and recommendations of the board with modifications. The applicant's argument the PMS should have considered supporting a civil conviction waiver based on the final court actions were not valid. USACC Pamphlet 145-4 cited that later court proceedings or actions that resulted in deletion or alteration of the initial offense does not alleviate the requirement for a waiver that was subsequently reduced to a lesser conviction, dismissed or expunged. The approving authority supported the board's recommendation the applicant should be disenrolled for failure to obtain a civil conviction waiver. The board's recommendation the applicant should be released from his contractual obligation because he did not breach his contract failed to address his responsibility to maintain eligibility requirements. The applicant received a civil conviction which required a waiver. If a waiver was not supported, at that point the applicant would be in breach of his contract. Therefore, the monies paid to him in the form of educational assistance must be recouped. The waiver of the debt was not supported.

s. On 7 January 2020, the commanding general of the USACCC directed the applicant be disenrolled and discharged from the ROTC program under the provisions of Army Regulation (AR) 145-1 (Senior ROTC Program: Organization, Administration and Training), paragraph 3-43a (11). The disenrollment was for a fact or condition that

barred the applicant's appointment as a commissioned officer based on his inability to obtain a civil conviction waiver. His obligation to the Army was directed by repaying the cost of advanced educational assistance provided by the Army in the amount of \$16,800.00.

t. DD Form 785 dated 8 January 2020, shows the applicant was disenrolled from the ROTC program on 7 January 2020 under the provisions of AR 145-1, paragraph 3-43a (11), fact or condition that bars appointment as a commissioned officer based on being unable to obtain a civil conviction waiver.

u. On 8 January 2020, Orders Number 008-01, issued by 5th Brigade, USACC, Cameron University, discharged the applicant from the USAR Control Group (ROTC), effective 7 January 2020.

v. DA Form 5315-E (U.S. Army Advanced Education Financial Assistance Record) shows the applicant received a total Army ROTC scholarship benefit in the amount of \$16,800.00.

4. The applicant provides:

a. [REDACTED] University Memorandum, Subject: Notification of University Representative – Determination of Suitability for Retention in the Army dated 9 April 2018 stated the applicant was being disenrolled from the ROTC program for misconduct as demonstrated by academic dishonesty. [REDACTED] was invited to attend or review the proceedings as an institutional representative during the hearing on 10 April 2018.

b. ROTC CDT CMD Form 67-10-1 for the period of 16 August 2016 through 5 May 2017 shows the rater rated the applicant's performance as excellent and commented he was in the top 50 percent of the Military Science III cadets at [REDACTED] University and one of the best leaders of his class. The senior rater rated his potential as most qualified and commented he was fifth out of 12 cadets he rates and one of the best leaders of his class.

c. Character reference from [REDACTED] dated 9 January 2018 states his first meaningful interaction with the applicant was in their sophomore year. In the 3-years since, he had witnessed the applicant doing positive things that vouch for his character, through his words or actions. The applicant had shown a great commitment to the program by competing on the Ranger Challenge team, participating in the [REDACTED] Memorial marathon and fund raising. He did not observe the applicant do anything unethical or immoral and he displayed the utmost character. He recommended the applicant be retained in the ROTC program. A handwritten note on the documents stated the person who wrote the reference tested positive for drugs and was allowed to commission.

d. Character references from multiple personnel associated with the applicant attesting to his character, leadership, community involvement, integrity, dedication, empathy, professionalism, and intellect.

e. DA Form 4856 dated 31 March 2016 regarding the applicant's performance in the month of March 2016. He performed exceptionally and he received the Superior Cadet Decoration and Military Order of World War for his commitment, dedication and excellence above his peers and involvement in the community. He had demonstrated that he was a follower and bystander. He needed to improve his knowledge that correlates to the Army.

f. DA Form 4856 regarding the applicant's performance during month of November 2015 states he excelled past the standard and expectations set for him. He had been selected to take the role of a squad leader which shows his superiors believe he was capable of handling stress that would come with the role. He demonstrated the traits of confidence, resiliency and creating a positive environment.

g. DA Form 4856 dated 25 September 2016 regarding the applicant's expected performance for the Fall of 2016. The applicant had shown he was versatile and had the ability to be well rounded. He needed to continue to work on his communication skills as it is the greatest asset for building trust.

h. [REDACTED] University letter dated 13 September 2016 states due to the applicant's outstanding record for academic achievement and a member of one or more honors societies he was invited to the 2016 Convocation where he would be recognized for his academic success.

i. [REDACTED] University letter dated 22 January 2016 states the applicant was named to the Dean's Honor Roll. His hard work and commitment earned him a place among an elite group of student who attained a 3.0 grade point average during the fall 2015 semester.

j. National Society of Scabbard and Blade certificate shows on 29 March 2016, the applicant was extended a membership for consistently displaying strong moral character and exhibiting significant potential as a leader, professional and military officer.

k. The Military Order of the World Wars certificate shows on 13 March 2015, the applicant was awarded the ROTC Award of Merit for his support of the ROTC program by giving personal time to support operations and fundraisers.

l. The Military Order of the World Wars certificate shows on 25 March 2016, the applicant was awarded the ROTC Award of Merit for volunteering to represent the

battalion during organizational events and maintaining an above average grade point average for three semesters.

m. The George D. Keathley Department of Military Science SGT York Award was presented to the applicant.

n. The George D. Keathley Department of Military Science Jack Wolfson Scholarship was presented to the applicant.

o. The George D. Keathley Department of Military Science Superior Cadet award was presented to the applicant.

p. Certificate of training shows the applicant successfully completed the ROTC Advanced Camp on 1 August 2017.

q. DA Form 4856 dated 13 February 2019 shows the applicant was counseled for being placed in a leave of absence for his pending disenrollment from the ROTC program for failure to obtain a waiver for his possession of a firearm while intoxicated, speeding and marijuana charges. The arrest triggered the requirement for a civil conviction waiver and failure to obtain it he would not meet the commissioning requirements. The applicant agreed with the counseling.

r. DFAS letter dated 16 March 2023 wherein the applicant was notified his indebtedness for ROTC education tuition assistance in the amount of \$16,800.00 was validated. He was disenrolled on 22 December 2020 for failure to maintain academic retention standards.

s. USACC letter dated 27 May 2020, informed the applicant due to his disenrollment from the ROTC program he was required to repay the scholarship funds in the amount of \$16,800.00 which was validated.

t. Applicant letter to an unknown person or agency dated 7 December 2022 states he attempted to explain the injustice and unfair circumstances that occurred in the past 3-years regarding his indebtedness. He stated the board president concluded he should not be required to repay his indebtedness as he did not breach his ROTC contract. He also stated the indebtedness had caused financial hardship to his family, most of his pay goes to the debt. The decision for him to repay his educational assistance was an injustice and unfair due to having a toxic leader that abused his position of authority. He did not breach his contract and should not be required to repay the scholarship benefits. He had been supported by his ROTC leaders and cadre and his counselings show he did amazing work as a cadet. A new leader reported and the leader did not like him so he abused his power and took everything away from him. He did not allow this situation

to get in his way, he continues to work hard as a teacher and doing his best to make all his payments. He does not want interest to build up or affect his financial record.

u. Letter dated 7 November 2017 from Doctor [REDACTED] Department of History and Government [REDACTED] University to the applicant reference academic dishonesty penalty which stated she had concerns regarding a rough draft of the applicant's research paper on the Spanish-American War regarding academic dishonesty. The concerns warranted the penalty for purchasing a paper and submitting it as his own work. This misrepresentation was unacceptable academic dishonesty and warranted a failing grade for the course.

v. DA Form 4856 dated 21 November 2017 the applicant was counseled regarding being placed on a leave of absence for a pending disenrollment for academic misconduct. The applicant agreed to the counseling.

w. E-mail from the applicant to [REDACTED] dated 7 November 2017 states she was correct; he did purchase an essay for which he was sorry. He purchased the essay because he was falling behind in his course work due to a hospitalization. He was so far behind that he was missing class to catch up on studying for tests and homework. He offered to redo the paper and he did not want to fail the course.

x. E-mail from Major [REDACTED] dated 26 April 2018 states he was informed the applicant waived the required time limit for a board notification. Faculty was invited to attend the interview but they declined the attendance.

y. Character reference from [REDACTED] (the applicant's father) states not every father can enjoy the privilege of saying he is proud of their children as he can about his son. The applicant devotes personal time helping and supporting his community and those around him. It was devastating and unfortunate that on 13 February 2019, the applicant was notified by his commander he was going to be disenrolled from the ROTC program due to being unable to obtain a waiver for a matter that occurred 2-years prior under a different commander. He was advised by his previous chain of command to continue to work hard to keep his grades high, including physical training and to obtain a certificate on safety weapon carrying permit. The applicant set his standards high which he was successful in achieving as well as the requirements of the ROTC program. He competed on the Ranger Challenge team, completed advanced camp, received various scholarships, recognized by the Dean, was on the top ten list and was selected to commission in the Armor branch for active duty. The incident that led to his disenrollment was completely cleared and expunged by the district judge as it was incorrect and erroneous. The vehicle he was driving the night of the incident was not his which contained marijuana in the center console also not his. He was not intoxicated and was not charged. The firearm that was in the vehicle was a weapon he purchased

and was going to practice shooting the next day and he did not have the knowledge of the law, rules and regulations for the requirement to have a permit for the firearm.

z. DA Form 4856 dated 20 November 2017 for possible disenrollment from the ROTC program for violation of Army values.

(1) The applicant was arrested and charged with possession of a firearm while intoxicated, speeding and possession of marijuana. He was on probation for the possession of a firearm while intoxicated.

(2) His professor accused him of submitting a bibliography for his Introduction to Historical Research and Writing as his own which it was not. He accepted an academic dishonesty penalty and a grade of zero for the paper.

(3) His professor accused him of submitting a history paper in his U.S. History class as his own when in fact it was not which the applicant admitted to, stating he purchased the paper. He accepted an academic dishonesty penalty and received a failing grade for the course.

(4) The applicant failed to disclose this incident to the Department of Military Science which is a lie of omission.

(5) As a potential future officer, he knew the Army values and was expected to follow them both in his personal and professional life. The pattern of conduct exhibited in the criminal charges with civil authorities and academic dishonesty brings his character and suitability to be an officer into question. His PMS was considering placing the applicant on a leave of absence and initiating disenrollment proceedings but the decision was not final. The applicant agreed to the counseling but wrote the marijuana charge was dropped.

aa. Letter from the applicant dated April 2022 states the indebtedness has been a financial hardship on him and his family and he needs forgiveness regarding the debt. His disenrollment was an injustice. The president of the Board of Officers recommended he should not have to pay back his advanced educational assistance due to the understanding that the disenrollment was unfair. He continues to be strong by finishing his master's degree in education while working as an elementary school teacher since 2018. Though his dream of becoming an officer has been crushed, it has been a great experience working with children and the school staff because it gives him the same experience the ROTC program gave him. He asks for forgiveness or a reduction of his debt because it has made his life difficult.

bb. OPAT Scorecard showing his physical assessment scores.

cc. DA Form 3881 dated 10 April 2018 for an investigator to question the applicant regarding academic dishonesty for plagiarism.

dd. DA Form 3881 dated 20 November 2017 for an investigator to question the applicant regarding two counts of academic misconduct and one arrest.

ee. [REDACTED] University Student Wellness Center letter dated 28 February 2018 states the applicant was referred to the center by his commander on 20 November 2018. He had been diligent in making his appointments. The applicant had ROTC discipline but worked on aspects of his life and made many improvements. The counselor requested it be considered the applicant be allowed back into the ROTC program.

ff. Memorandum from the applicant dated 10 April 2018 states his first count of academic dishonesty was a misunderstanding and lack of knowledge. He used another person's bibliography and was non-malicious because the paper contained the other person's information. The professor recommended another student assist the applicant with his paper. The student stated he could use her sources for his paper. Instead of writing his own paper, he just took her paper and turned it in because he planned on using her sources. He was not aware you could plagiarize a bibliography and thought the point of a bibliography was for the professor to see if the student was on track with the assignment.

His second academic dishonesty was wrong. He was in the hospital and he could not write his paper because of his medical condition. He did not want to fail the course so he decided to purchase a paper online. He knew it was wrong and he had no excuse for his actions. He understood it was a serious integrity violation. When the professor asked him about the paper, he immediately admitted it was not his. He understood why his commander was putting him through the process.

Integrity is very important as a leader. How can a leader expect Soldiers to do the right thing if the leader cannot. He is glad he learned his lesson without anyone getting hurt as losing a Soldier because of an integrity violation is unacceptable.

At the beginning, he held it against his commander and played the victim. He was immature but has grown from the situation. He came to understand why he was in the situation and understood his commander's point of view and what it took to be a leader. He had been going to counseling which had helped him express himself and to learn why he was in this situation. He knows he is more than capable of leading Soldiers and it is something that he wants to do until he retires. He loves to help others and wants to be retained in the ROTC program and become an officer in the U.S. Army and to be the best leader he can be.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found relief is not warranted.

2. The Board found the reason for initiating disenrollment proceedings against the applicant was valid and, although an investigating officer concluded that the applicant did not breach his ROTC scholarship contract and should not be ordered to repay the monies expended on his education, the Board concurred with the findings of a higher-level review that he did, in fact, breach his contract and a waiver of debt was not supported. Based on a preponderance of the evidence, the Board determined the debt the applicant incurred as a result of disenrollment from ROTC is not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

9/16/2024

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. 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 U.S. Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. A Soldier's debt to the U.S. Army may be remitted or canceled based on this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

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

a. Paragraph 3-3 (Ineligibles), all categories of ineligibles who meet the requirements set by the school authorities may take Army ROTC classes for all 4-years for academic credit only. Participation in other ROTC programs is further limited by their status as auditing students as specified in paragraph 3-27. b. The following students are ineligible for enrollment in the basic or advanced course. (3) A student who has a pre-trial diversion for a felony, any civil conviction, an adverse adjudication, or any type of court-martial conviction even though the record may have been sealed or expunged, unless a waiver is granted. These students excluding scholarship students may be permitted to participate in the basic course without a waiver but must have obtained a waiver prior to attending basic camp or enrolling in the advanced course. No waiver will be required for minor traffic offenses resulting in a fine of \$250.00 or less, except when the applicant has accumulated six or more such offenses during any 12-month period. Waivers are not required for disciplinary actions in connection with the provisions of the Uniform Code of Military Justice (UCMJ), Article 15. Such disciplinary actions will be considered when evaluating the applicant's character. In requesting a waiver, the student must list all the above proceedings, whether by military or civilian courts.

b. Paragraph 3-3e, request for waiver of a conviction for offenses listed below, that are supported by intermediate commanders, will be sent through channels to CG, USAROTCCC, for determination. Waiver approval authority will not be delegated; however, disapproval authority may be exercised at each command level. A waiver request disapproved by any intermediate commander need not be sent to higher authority. The supporting recommendations at each command level and appropriate comments as shown below will be included. (2) A conviction that resulted in a sentence

of confinement in a prison, stockade, or detention area, or in a sentence to hard labor. Later proceedings that delete or alter an initial determination of guilt (for example, pardon, expungement, amnesty, commutation, set aside and suspension) do not eradicate the conviction for the purpose of this paragraph. However, convictions overturned or successfully appealed are not convictions for the purpose of this paragraph if the appropriate officials state in writing that no further proceedings (such as retrial) are pending or being considered.

c. Paragraph 3-7 (Character), applicants must be of good moral character, as normally substantiated by no record of disciplinary problems or civil convictions. Applicants who have been convicted of an offense that would normally evidence lack of good moral character when the conviction has not been waived under paragraph 3-3b(3) are not eligible for enrollment under the provisions of this paragraph.

d. Paragraph 3-39 (Termination of scholarship and disenrollment), the Commanding General, ROTC Cadet Command, is the approving authority for termination of scholarship and/or disenrollment. A scholarship will be terminated, and the cadet disenrolled for any of the reasons listed in paragraph 3-43.

e. Paragraph 3-43 (Disenrollment), a. A non-scholarship cadet may be dis-enrolled by the Professor of Military Science. A scholarship cadet may be dis-enrolled only by the CG, ROTCCC. Disenrollment authority does not include the discharge authority for Simultaneous Membership Program participants. Non-scholarship and scholarship cadets will be dis-enrolled for the following reasons: Subparagraph (11), it is discovered that a fact or condition exists that will bar a cadet for appointment as a commissioned officer, to include a positive urinalysis for drug and alcohol abuse. When a cadet is under charges, in confinement or under investigation, HQDA will be notified immediately if the cadet is an MS IV and a accession file was evaluated by HQDA ROTC Selection Board. (14), undesirable character demonstrated by cheating on examinations, stealing, unlawful possession, use, distribution, manufacture, sale (including attempts) of any controlled substances, 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.

f. Paragraph 3-44 (Discharge and separation from the U.S. Army Reserve), c. 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.

4. 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. 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

b. To such other terms and conditions as the Secretary concerned may prescribe to protect the interest of the United States.

5. U. S. Army Cadet Command Pamphlet 145-4 (Enrollment, Retention and Disenrollment Criteria Policy and Procedure) in effect at the time, provides guidance for the PMS to use in the management of Cadets, and processing Cadet Actions for enrollment, retention, and disenrollment. Paragraph 2-36 (Civil Convictions or Adverse Adjudication or Disposition) states applicants contracting must disclose any arrests, charges, or detention by authorities even if the charge was subsequently dismissed, set aside, sealed or expunged from the records. Failure to do so may result in disenrollment. A student is ineligible for contracting and/or retention as a contracted cadet unless a waiver was granted. A waiver was required if found guilty by a court of law, made admission of guilty by formal entry of plea or by payment of a fine or forfeiture in lieu of appearance before a court of law, even when the record of initial conviction or adverse adjudication was expunged, sealed, set aside, dismissed or reopened to change original findings of guilty.

6. AR 15-185 (Army Board for Correction of Military Records (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 applicants 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//