

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 June 2024

DOCKET NUMBER: AR20230013487

APPLICANT REQUESTS: in effect –

- remission, cancellation, or waiver of Army Senior Reserve Officers' Training Corps (ROTC) Scholarship debt
- a personal appearance before the Board via telephone/video

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

- DD Form 149 (Application for Correction of Military Record)
- Memorandum - Subject: Recommended Disposition for Scholarship Cadet Disenrollment - [Applicant], 12 September 2018
- Orders Number 288-517, 15 October 2019
- Avanti Polar Lipids position officer, 3 May 2022
- Optum notification, 2 June 2022
- Administrative Wage Garnishment Request for Hearing or Eligibility Determination, 15 August 2022
- U.S. Government Wage Garnishment Order, 15 September 2022
- Pay Statement, 9 October 2022
- Applicant's statement, 13 October 2022
- Pay Statement, 23 October 2022
- Apartment Lease Contract, 16 June 2023
- Loan Report, 24 August 2023
- Alabama Traffic Crash Report, 18 July 2023
- Rent Statement, 2 August 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:

a. She is currently going through a lot of hardship. Prior to her current job the company closed, and she was unemployed. She did not know of this debt until the Department of Treasury started to garnish her wages for this debt. She submitted an appeal with them, and Defense Finance and Accounting Service (DFAS) denied it. She also attempted to set up a payment plan, but they were requesting \$500.00 a month.

b. She lives on her own and does not have that kind of money to spare a month. When they were garnishing her wages, she was falling behind on bills. When she first enrolled in ROTC and contracted as a Cadet, she was ready to be a part of the military. A couple of months in, she gained custody of her younger sister, and she informed everyone in leadership at ROTC to see what she could do. They told her they would make amends for her, but this did not happen.

c. She was 19 years old taking care of a minor when she was just a child herself. The only option she was given was to be discharged from ROTC and no other options. The debt paper that she signed was not in this amount of \$32,000.00. She is asking that this debt be forgiven.

b. Recently in July, she was hit, and her car was totaled causing her to have to start back over. She is currently on leave from work due to injuries and she also must attempt to get another car. She is just having a hard time and does not have that kind of money. Also, next month her student loans are coming out of deferment which she must start paying on. The finance office has also stated that they cannot see anything on her since it has been over a year since she was discharged. She is asking for forgiveness of this debt.

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

a. She enlisted in the Alabama Army National Guard (ALARNG) on 14 October 2016.

b. On 3 April 2017, National Guard Bureau (NGB) Form 594-1 (ARNG Simultaneous Membership Program Agreement) shows she agreed to pursue a commission as an officer through the ROTC. The applicant also completed and signed DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) which shows she enrolled in the University of Alabama at Birmingham ROTC program and the Department of the Army agreed to pay scholarship benefits for a period of 3.5 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 agreed to maintain, at a minimum, a cumulative academic Grade Point Average (GPA) of 2.0 on a 4.0 or equivalent scale. This GPA must also be maintained for each semester or quarter. If she was required by her academic major or by the school, she was attending to maintain a higher cumulative and semester or quarter GPA, she agreed to maintain that higher standard until the completion of the academic requirements for her degree. She understood and agreed that failure to maintain the minimum academic GPA may subject her to disenrollment from the ROTC program.

(3) She agreed to maintain at least a 2.0 on a 4.0 or equivalent scale, cumulative and semester or quarter academic GPA in all ROTC courses. She understood and agreed that failure to maintain the minimum ROTC courses GPA may subject her to disenrollment from the ROTC program.

(4) She understood and agreed that she would incur an active duty and/or reimbursement obligation after the first day of her MS [Military Science] 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.

(5) 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 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."

(6) If she was offered the opportunity to repay her advanced educational assistance in lieu of being ordered to active duty, she would 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 her advanced education from the commencement of this contractual agreement to the date of her disenrollment or refusal to accept a commission.

(7) If she was disenrolled from ROTC, she understood the Secretary of the Army, or his or her designee, retains the prerogative to either order her to active duty or order

monetary repayment of her scholarship benefits. Therefore, if she was required to repay her advanced educational assistance under the terms of this contract, her subsequent enlistment in an Armed Service would not relieve her from her repayment obligation.

c. Her record contains a Memorandum for Record, Subject: ALARNG Status, dated 22 August 2018, which states she was being discharged from the ALARNG for unsatisfactory performance.

d. On 24 August 2018, the University of Alabama-Birmingham PMS notified the applicant that he was initiating her disenrollment from the ROTC program under the provisions of Army Regulation (AR) 145-1 (Senior ROTC Program, Organization, Administration and Training), paragraph 3-43a(6), based on her failure to maintain a minimum semester GPA of 2.0 on a 4.0 scale in all ROTC courses which constituted, either individually or collectively, a breach of terms of her Senior ROTC (SROTC) contract with the U.S. Army. As a consequence, effective immediately, the PMS placed her on a leave of absence pending disenrollment. Supporting documents for disenrollment action were enclosed. The PMS informed the applicant of her appellate rights and that:

- she was entitled to and may request a hearing and present matters regarding her disenrollment; and
- may consult with any reasonable available military officer (who need not be an attorney) or duly licensed civilian counsel to help her decide whether or not to waive hearing and otherwise assist her in exercising her rights
- if she was a scholarship cadet, she may be called to enlisted active duty as an enlisted Soldier or be required to repay scholarship benefits in the amount of \$24,384.00 in lieu of call to active duty in fulfillment of her contractual obligation
- if she was a Simultaneous Membership Program (SMP) participant, in fulfillment of her contractual obligation to the U.S. Army she may be released from ROTC and returned to her Reserve or National Guard 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 of \$24,384.00
- if eligible, she 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; and 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
- if eligible, she may request expeditious call to enlisted active duty following completion of her disenrollment, in order to satisfy her contractual obligation and recoup her indebtedness to the U.S. Government

e. The applicant elected to decline a delayed and expedited call to active duty.

f. On 12 September 2018 –

(1) The applicant acknowledged receipt of the Notification of Disenrollment from the ROTC – Due Process and Appellate Rights of Scholarship/Non-scholarship and elected to submit a Cadet Waiver and Waiver of Rights. In relevant part, she also acknowledged she was fully advised and informed, and admitted she breached the terms of her ROTC contract and elected to irrevocably waive her right to:

- a hearing before a Board President
- challenge the existence of a valid contract between herself and the Army ROTC
- dispute the amount and validity of any indebtedness to the U.S. Government as stated in the disenrollment notification and/or Army and/or university records
- request forgiveness in whole or in part of her indebtedness to the U.S. Government

(2) The PMS formally recommended the applicant be disenrolled from the University of Alabama at Birmingham Army ROTC program and stated, the applicant waived her rights to a board and requested to pay back all scholarship funds paid on her behalf. In light of the applicant's lack of desire and her failure of MS 201, the PMS fully supported her disenrollment and her request to repay \$12,116.00 scholarship funds dispersed on her behalf, and recommended she return to the ALARNG.

g. On 8 November 2018, the Commander, Sixth Brigade, U.S. Army Cadet Command (USACC) recommended approval of the disenrollment action. He supported the PMS recommendation to disenroll the applicant and monetary payback and return to her unit.

h. On 29 January 2019, the Commanding General, USACC notified the applicant that she was disenrolled and would be discharged from the ROTC program under the provisions of AR 145-1, paragraph 3-43a(6), July 1996. Disenrollment was based on her failure to maintain a minimum semester GPA of 2.0 on a 4.0 scale in all ROTC courses. In pertinent part:

(1) 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 total amount of monies

spent in support of your education is \$24,384.00. A U.S. Army Advanced Education Financial Assistance Record (DA Form 5315-E) detailing the debt was enclosed.

(2) She was instructed to elect one of the options described on the enclosed addendum and return it to the Commander, 6th Brigade, USACC.

(a) If she elected to pay the total amount owed in a lump sum, she was informed to return the signed addendum and a certified check or money order payable to the "TREASURER OF THE UNITED STATES."

(b) If she elected to initiate a repayment plan, she was informed to return the signed addendum, but DO NOT SUBMIT A PAYMENT AT THIS TIME. Her repayment selection will be forwarded to the DFAS-Indianapolis Center. They would provide her a repayment schedule.

i. On 21 February 2019, she was discharged from the ALARNG, under the provisions of National Guard Regulation 600-200 (Enlisted Personnel Management), paragraph 6-35b(5), by reason of separation of cadets on disenrollment from the SROTC or an ROTC Scholarship program. NGB Form 22 (Report of Separation and Record of Service) shows she given an "Uncharacterized" character of service.

4. In support of her case the applicant provides:

a. Orders Number 288-517 dated 15 October 2019, issued by the ALARNG, which discharged her from the ARNG, effective 21 February 2019. The orders show her type of discharge as "uncharacterized."

b. Avanti Polar Lipids position officer dated 3 May 2022, showing she was offered a position as a Research Assistant in the company's Formulation Division, effective 13 June 2022. In this position, her compensation would be at the rate of \$47,500.00 annually (less applicable taxes), based on a 40-hour work week.

c. Optum notification dated 2 June 2022, which notified her that her position was being eliminated and her employment separation date was anticipated to be 2 August 2022.

d. Administrative Wage Garnishment Request for Hearing or Eligibility Determination dated 15 August 2022, which shows an account balance of \$32,879.79, and she requested a "hearing based on the amount of the debt - I do not owe the full amount of the debt". She also indicated she was ineligible for garnishment because she was involuntarily terminated from her last employment, and she had been employed in her current job less than 12 months. She did not sign the form until 13 October 2022.

e. U.S. Government Wage Garnishment Order dated 15 September 2022, which ordered her employer to deduct the appropriate amount from the applicant's wages on the first day after receipt the Order.

f. Pay Statement dated 9 October 2022 showing the applicant's earnings, deductions, garnishment in the amount of \$237.53, and net pay.

g. Applicant's statement dated 13 October 2022, wherein, she states, she was ineligible for a garnishment due to her being involuntarily terminated from her previous job at Optum Pharmacy, and requests a hearing based on the amount of the debt.

h. Pay Statement dated 23 October 2022, which shows, her earnings, deductions, garnishment in the amount of \$237.54, and net pay.

i. Apartment Lease Contract dated 16 June 2023, which shows her rent and charges in the amount of \$1,099.00.

j. Loan Report dated 24 August 2023, which shows the applicant's Federal Direct Loan amounts.

k. Alabama Traffic Crash Report dated 18 July 2023, which shows she was involved in an accident.

l. Rent Statement dated 2 August 2023, showing her current rent and lease charges.

#### BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial 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 and available military records the Board acknowledged the applicant's compelling personal circumstances, including her assumption of guardianship for her younger sister at age 19, her subsequent disenrollment from ROTC, and the financial hardship she has endured since separation. The applicant credibly described a series of challenges, including involuntary unemployment, wage garnishment, a totaled vehicle, and medical leave due to injury—all of which have significantly impacted her financial stability. She stated she was unaware of the debt until garnishment began and has made good faith efforts to resolve the matter, including contacting DFAS and attempting to establish a payment plan.

2. The Board found the applicant was disenrolled from the ROTC program in August 2018 for failure to maintain the required academic GPA, in accordance with AR 145-1, paragraph 3-43a(6). The record reflects that she waived her rights to a disenrollment board and elected to repay the scholarship funds rather than accept a call to active duty. Importantly, the University of Alabama at Birmingham Professor of Military Science (PMS) and senior leadership formally recommended that the applicant repay \$12,116.00 in scholarship funds, rather than the full amount of \$24,384.00 originally expended on her behalf. This recommendation was supported by the Commander, Sixth Brigade, U.S. Army Cadet Command, and approved by the Commanding General, USACC.

3. During deliberation, the Board acknowledged the applicant’s early and earnest efforts to address her financial obligations, the formal recommendation from ROTC leadership to reduce the debt, and the substantial personal hardship she has endured. Taking these factors into account, the Board determined that partial relief was warranted and found reduction of the applicant’s debt to \$12,116.00, in alignment with the amount endorsed by the Professor of Military Science at the time of disenrollment is appropriate. However, the Board denied full remission of the \$32,000.00 debt, it concluded that adjusting the obligation appropriately reflects both the original leadership intent and the applicant’s demonstrated financial need.

4. The applicant’s request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

BOARD VOTE:

| <u>Mbr 1</u> | <u>Mbr 2</u> | <u>Mbr 3</u> |                      |
|--------------|--------------|--------------|----------------------|
| :            | :            | :            | GRANT FULL RELIEF    |
| XXX          | XXX          | XXX          | GRANT PARTIAL RELIEF |
| :            | :            | :            | GRANT FORMAL HEARING |
| :            | :            | :            | DENY APPLICATION     |

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by notifying DFAS of the applicant's Army Senior Reserve Officers' Training Corps (ROTC) Scholarship debt reduction to \$12,116.00.
  
2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to remission, cancellation, or waiver of Army Senior Reserve Officers' Training Corps (ROTC) Scholarship \$32,000.00 debt.

X //SIGNED//

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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. Paragraph 2-11 states that 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.
  
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.

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 (SROTC Program: Organization, Administration and Training) prescribes policies and general procedures for administering the Army's 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 maintain a minimum semester or quarter cumulative academic GPA of 2.0 on a 4.0 scale or higher if required by the school and at least a 3.0 on a 4.0 scale or equivalent semester or quarter and cumulative average in all ROTC courses.

- (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).

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 may be ordered to active enlisted service. If not ordered to active enlisted service, disenrolled cadets 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.

//NOTHING FOLLOWS//