

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 July 2024

DOCKET NUMBER: AR20230014503

APPLICANT REQUESTS: in effect:

- correct his Defense Finance and Accounting Service (DFAS) debt from \$29,953 to \$21,966
- correct the interest charged to the amount of \$21,966 vice \$29,953
- personal appearance before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Army Senior Reserve Officer Training Corps (ROTC) Scholarship Cadet Contract
- U.S. Army Advanced Education Financial Assistance Record
- Memorandum Probationary Officer Elimination Case
- Memorandum Officer Elimination - Probationary
- Memorandum Advisory Opinion from Legal Assistance Office
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 29 June 2023

FACTS:

1. The applicant states his DD Form 214 shows he owes DFAS \$29,953 but according to a military attorney, the total amount he owes is actually \$21,996. This is the amount his DD Form 214 should have on it. Ms. A- agreed with the fact he owes a pro-rated amount, and the attorney outlines how this new amount was calculated. DFAS says he owes \$26,971 because they took his last paycheck and applied it to the \$29,953 so after applying his last paycheck to the new amount outlined by the attorney, DFAS should only be collecting \$19,014 from him. He is also currently making payments on this debt and interest is accruing on a larger amount than he owes. He requests this error be corrected as well. The contracts he signed with the U.S. Army Cadet Command and the Army clearly outline that he only owes a pro-rated amount of his debt based on his time in service.

2. The applicant provides the following documents:

a. Army Senior ROTC Scholarship Cadet Contract, 29 March 2019, which shows a scholarship benefits that are paid for a period of 2.5 academic years, full tuition and fees, a flat rate of \$1,200 for books and laboratory expenses. He understood and agreed that if he voluntarily or because of misconduct, failed to begin or failed to complete any period of active duty or duty in a Reserve status not on active duty that he had incurred under the contract whether as an officer or an enlisted Soldier, he would be required to reimburse the United States an amount of money, plus interest, that was equal to or bared the same ratio to the total cost of the financial assistance provided to him by the United States as the unserved portion of such duty bared to the total period of such duty he was obligated to serve.

b. U.S. Army Advanced Education Financial Assistance Record, 13 June 2023, shows the total Army ROTC scholarship benefits paid was \$29,953.

c. Memorandum Probationary Officer Elimination Case, 13 June 2023, stated the Department of the Army Ad Hoc Review Board had reviewed the Probationary Officer Elimination case on the applicant. They determined he would be involuntarily eliminated from the United States Army with an under honorable conditions (general) characterization of service. The elimination was based on misconduct and moral or professional dereliction. Recoupment action would be conducted.

d. Memorandum Officer Elimination - Probationary, 15 June 2023, informed the applicant he would be discharged from the Army with an under honorable conditions (general) characterization of service and the discharge would be completed no longer than 14 days from the date of the memorandum.

e. Memorandum, Subject: Advisory Opinion on behalf of the applicant from the Fort Leonard Wood, Missouri legal assistance office, 26 June 2023, states:

(1) The memorandum offers a review of the applicant's discharge documents and submits that the amount that should be recouped from him be reduced from \$29,953 to \$21,996.

(2) Federal law permits the Department of Defense to recover any unearned portion of a financial benefit that a servicemember receives when a condition of that benefit is not met. Although there are exceptions to this rule, no exception seems to apply to the applicant. Further, all applicable orders indicate his educational benefits will be recouped. Both federal law and paragraph 5.c of his ROTC contract make clear though, he must repay only part of his education assistance.

(3) His DD form 214 reflects he served 25.5 months on active duty out of his 96-month total service obligation. He therefore failed to fulfill 70.5 months, or approximately 73 percent of his total service obligation. He therefore is obligated to pay approximately

73 percent of the total funds that the Army contributed to his education. His total recoupment obligation is therefore \$21,996.

3. The applicant's service record contains the following documents:

a. DA Form 71 (Oath of Office - Military Personnel) shows the applicant took the oath of office as a Reserve commissioned officer on 14 May 2021.

b. Orders 171-1320, published by Headquarters, United States Army Garrison, 20 June 2023 show he would be discharged on 29 June 2023. Recoupment would be conducted in the amount of \$29,953.

c. DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged on 29 June 2023. He had completed 2 years, 1 month, and 16 days of active-duty service. His Reserve obligation termination date was blank. Item 18 (Remarks) reflects the amount of his recoupment action would be conducted in the amount of \$29,953.

4. On 5 June 2024, DFAS responded to request for information regarding his debt. They included his DDMS Debt document and debt reason document, which show:

- Original debt amount: \$26,971.97
- Admin charges: \$426.44
- Collections: \$550.00
- Balance due: \$26,848.41
- 4 June 2024 payment: \$50
- 10 May 2024 payment: \$50
- Debt is for tuition assistance received prior to separation

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not 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 record, the Board determined there is insufficient evidence to support the applicant's contentions for relief. The Board acknowledged his contentions that his DD Form 214 inaccurately reflects a debt of \$29,953 and that, based on a legal assistance memorandum, his actual obligation should be prorated to \$21,996.

2. The Board noted, the memorandum outlines a theoretical calculation based on time served, the applicant has not provided documentation substantiating that DFAS collected his final paycheck or applied it toward the debt in the manner he describes. The burden of proof rests with the applicant, and this Board is not an investigative body. DFAS records indicate an original debt of \$26,971.97, with administrative charges and partial collections accounted for, resulting in a current balance of \$26,848.41. The applicant’s assertion that DFAS should only be collecting \$19,014 lacks supporting evidence and does not reconcile with the official debt documentation provided by DFAS.

3. Furthermore, the applicant’s ROTC contract clearly states that recoupment will be based on the unserved portion of his service obligation, and the Army’s elimination orders, and DD Form 214 reflect a recoupment amount consistent with the total scholarship benefits received. The Board agreed, in the absence of verified financial records or official recalculations from DFAS, the Board found no error or injustice in the current debt amount or interest calculation. Relief is therefore denied.

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
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

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. Army Regulation (AR) 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 United States Code (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.

2. Title 10, USC, section 2005 (Advanced Education Assistance: Active-Duty Agreement; Reimbursement Requirements), provides that the Secretary concerned may require, as a condition to the Secretary providing advanced education assistance to any person, that such person enter into a written agreement with the Secretary concerned under the terms of which such person shall agree:

a. To complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement

b. That if such person failed to complete the education requirements specified in the agreement, such person would serve on active duty for a period specified in the agreement (usually a four-year enlistment at the grade of E-1, in a MOS 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.

3. AR 37-104-4 (Military Pay and Allowances Policy), provides the policies and provisions for entitlements and collections of pay and allowances of military personnel. Paragraph 31-2 (Recoupment) states recoupment applies to those individuals who have signed an agreement that contains recoupment provisions. Recoupment action will be taken at transition when the personnel and finance communities identify a Soldier or cadet as being eligible for recoupment action.

4. AR 600-8-24 (Officer Transfers and Discharges) prescribes the officer transfers from active duty (AD) to the Reserve Component and discharge functions for all officers on AD over 30 days or more. It provides principles of support, standards of service, and policies to support officer transfers and discharges. It states, individuals who participate in certain advanced education programs and fail to complete their incurred active duty service obligation (ADSO) are subject to recoupment provisions. Recoupment action by the servicing Finance Office/Defense Military Pay Office must be accomplished prior to separation of an individual who has not fulfilled the ADSO incurred as a result of participation in that advanced education program in accordance with applicable law and regulation.

5. AR 15-185 (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 that applicant's 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//