

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240000423

APPLICANT REQUESTS, through counsel, reconsideration of her previous request for:

- a medical disability retirement for post-traumatic stress disorder (PTSD) at no less than 30 percent
- a change to the reason for disenrollment from the Reserve Officers' Training Corps (ROTC) program from academic to medical
- cancellation of her ROTC education debt in the amount of \$121,554.89
- personal appearance before the board via video or telephone

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

- DD Form 149, Application for Correction of Military Record)
- Power of Attorney
- Legal Brief (Original Applicant's Affidavit/Original Legal Brief
- Request for ROTC Duty memorandum
- Green to Gold Scholarship Program memorandum
- 2-Cadet Command Form 131-R, Cadet Action Request
- Privacy Act Statement Army Senior ROTC Disenrollment
- Green to Gold Scholarship Information
- DD Form 214, Certificate of Release or Discharge from Active Duty
- DA Form 597-3, Army Senior ROTC Scholarship Cadet Contract
- DD Form 4, Enlistment/Reenlistment Document-Armed Forces of the United States
- Notification of Disenrollment from the ROTC
- Disenrollment from the ROTC Program
- University Transcripts
- Department of Veterans Affairs (VS) Rating Decision
- Debt Letter
- VA Benefits Letter
- Medical Records
- Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veteran Claiming PTSD

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20210014681 on 20 September 2022. Counsel presents new argument that warrants consideration by the board.
2. Counsel states the applicant comes before the Board presenting new evidence and new arguments this Board did not consider.
 - a. This Board did not consider that the applicant can assert "impracticability" as a defense. Her PTSD was an unforeseen circumstance which impaired her ability to perform under the ROTC contract.
 - b. This Board also did not consider the Professor of Military Science's (PMS) requirement to ensure the cadet's eligibility and refer cadets for medical separation upon knowledge of a potentially medically disqualifying condition. Had the PMS performed their duty accordingly, the applicant would have been medically separated and it is possible the Government would not have requested recoupment of her scholarship funds.
 - c. Additionally, this Board rendered an arbitrary and capricious decision when it did not consider the applicant's PTSD in its discussion in accordance with the Secretary Hagel and Kutra memorandums. In the facts portion of this Board's decision, this Board referenced the advisory opinion in which the medical officer's analysis supported relief. However, this Board refused to grant relief.
 - d. Finally, the applicant presents evidence in the form of a letter from Licensed Certified Social Worker (LCSW).
 - e. The applicant hereby realleges all facts submitted in her prior application and supplement the record with the following facts. The applicant was the victim of military sexual trauma (MST) when she was sexually assaulted in 2011. In 2013, she received the Green to Gold ROTC Scholarship. According to her ROTC Scholarship, she was required to maintain a minimum grade point average (GPA) of 2.0 on a 4.0 scale. At the time she entered into this agreement with the Government she, nor the government, knew the extent of her PTSD or MST Symptoms.
 - f. After being discharged from the Army in 2013, the applicant attended a university in [REDACTED] During her first three semesters, she earned a GPA of 3.81 in the Spring 2014, a GPA of 3.65 for Fall 2014, and a GPA of 3.79 for Spring 2015.

g. In the Fall 2015 semester, the applicant began to experience symptoms consistent with PTSD. As a result, her grades dropped, and she could not maintain a minimum GPA of 2.0. She was disenrolled from the ROTC program after waiving her rights. She declined to return to active duty out of fear of reliving her MST experience. Now she is required to pay a debt in the amount of \$121,554 .89 to the United States government. She is also 100 percent service-connected for PTSD as of 4 January 2021. Her symptoms include:

- forgetting names
- unprovoked irritability with periods of violence
- suspiciousness
- depressed mood
- disturbances of motivation and mood
- impaired judgment
- mild memory loss
- forgetting recent events
- impaired impulse control
- chronic sleep impairment
- obsessional rituals which interfere with routine activities
- speech intermittently irrelevant
- difficult in adapting to stressful circumstances
- difficulty in adapting to work
- inability to establish and maintain effective relationships
- speech intermittently obscure
- difficulty adapting to work life setting
- anxiety
- occupational and social impairment with occasion al decrease in work efficiency and intermittent periods of inability to perform occupational tasks
- speech intermittently illogical
- difficult in establishing and maintaining effective work and social relationships
- forgetting directions

h. This Board denied her application on 2 December 2022. According to paragraph 13 "MEDICAL REVIEW" the medical advisor performed a Kurta analysis and concluded that (1) the applicant suffered PTSD; (2) The applicant's PTSD occurred during military service as evidenced by her MST; and (3) The applicant's PTSD partially excuses her noncompliance under the ROTC contract. Specifically, the medical advisor stated, "that the PTSD is a partially mitigating factor, specifically as it relates to academic versus medical disenrollment in the Green to Gold Program." Additionally, the medical advisor stated "[i]t is the opinion of this writer that the board consider providing relief given the nexus between trauma and difficulty focusing/concentrating, forgetfulness, impaired sleep, difficulty adapting, and a host of other issues that affect

academic/occupational performance, and that the medical diagnosis is associated with her time in service.

I. According to the LCSW, the applicant was experiencing symptoms of PTSD at the time she attended the ROTC program. Furthermore, the LCSW firmly states that “due to the [applicant’s] then-undiagnosed mental health diagnoses from August 2015-January 2016, she should have been medically disenrolled from ROTC. The undiagnosed PTSD and related symptoms prevented her from successfully completing her academic studies and ROTC program.

j. This Board based its decision on insufficient knowledge of contract law. The applicant breached the terms of her contract with the Government because her PTSD made her ability to perform impracticable. She would not have been able to perform under the terms of her agreement with the United States without extreme and unreasonable difficulties.

k. Additionally, this Board issued an arbitrary and capricious decision. The advisory opinion this Board cited, concludes that her PTSD was a mitigating factor that excuses her nonperformance. The decision shows that this Board failed to consider the applicant’s PTSD as an important aspect for the reason why she could not perform under her ROTC contract.

I. The applicant’s PTSD was so severe it rendered her ability to perform under the ROTC contract impracticable. The evidence shows that the applicant can assert the defense of impracticability. While the applicant breached her contractual obligations, this Board should find that the circumstances support her defense and noncompliance.

m. Impracticability is a defense to allegations of breach of contract. Impracticability is defined as a “fact that excuses a party from performing an act, especially a contractual duty, because (though possible) it would cause extreme and unreasonable difficulty.”

n. The restatement of contracts is a restatement of commonly accepted contract laws. While states may vary, the restatement second of contracts is a rendition of contract doctrines accepted by a majority of states. According to the Restatement (Second) of Contracts, “where, after a contract is made, a party’s performance is made impracticable without his fault by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged.”

o. When the applicant and the United States Government entered into their agreement, a basic assumption of the contract was that the applicant would not suffer from severe symptoms of PTSD. Furthermore, in the first three semester she performed

well with a GPA over a 3.0. There was no way for the Government or the applicant to contemplate a severe PTSD episode. The applicant did not develop PTSD because of her own malfeasance or negligence. Her PTSD was the result of experiencing MST. Once her PTSD became overwhelming, it became clear that her symptoms rendered her ability to complete her contractual obligations impracticable because to perform under the ROTC contract would cause the applicant extreme difficulty. The symptoms the applicant experienced included: depressed mood, disturbances of motivation and mood, impaired judgment, mild memory loss, impaired impulse control, chronic sleep impairment, anxiety, and occupational and social impairment with occasional decrease in work efficiency and intermittent periods of inability to perform occupational tasks.

p. Furthermore, it is important to note that it is the LCSW's opinion that the applicant's "undiagnosed PTSD and related symptoms prevented her from successfully completing her academic studies and the ROTC program.

q. To perform her obligations under the ROTC contract would cause the applicant extreme and unreasonable difficulty. The applicant would have to set aside her mental health to finish her academic studies. This would only increase the applicant's stress and therefore, has the potential to adversely affect the applicant causing extreme and unreasonable difficulty.

r. The applicant's PMS should have requested a waiver or disenrollment. Pursuant to U.S. Army Cadet Command (USACC) Regulation 145-5, Cadet Summer Training, upon noticing that the applicant's grades were deteriorating, the applicant's PMS should have attempted to talk to the applicant and find out the cause of her deficiency. Had the PMS taken the extra step to talk to the applicant he would have known about her disability and initiated medical separation.

s. It is the PMS's responsibility to "[v]erify the continuous eligibility of enrolled and contracted Cadets in the SROTC program."

t. As soon as a potentially medical disqualifying condition concerning a contracted Cadet becomes known, the PMS will either seek (1) retention of a Cadet through the Cadet's request for waiver of the disqualifying condition, or (2) disenrollment by initiation of appropriate action with accompanying medical documentation after a medical determination is completed by U.S. Army Cadet Command Surgeon.

u. Furthermore, disenrollments in accordance with USACC Regulation 145-1, ROTC-Army ROTC Scholarship Policy, Administrative, and Procedural Instructions 3-43a (2), (3), (5), and (7) do not normally call for recoupment or active duty, except for failure to disclose a fact or condition that will be processed in accordance with paragraph 8-10 below, Special Situations. (USACC Regulation 145-1 paragraph 3-43a Disenrollment reasons (2) - to receive training under Army Medical Department

programs, such as Health Professional Scholarship Program (HPSP) or United States Uniform Health Services (USUHS); (3) At their own request; (5) Medical Disqualification; (7) Personal hardship IAW AR 635-200, Personnel Separations-Active Duty Enlisted Administrative Separations, chapter 6.)

v. Here, the applicant was exhibiting symptoms of PTSD and her grades were dropping. At this time, her PMS had a duty to talk to the applicant to determine her continuous eligibility. If the PMS would have inquired as to why her grades were dropping, he would have been privy to the applicant's PTSD symptoms and medically disenrolled her. If, she was medically separated from the ROTC program it is reasonably likely that she would not have had to repay her scholarship funds back. This did not happen, which is both an error and injustice. Therefore, she requests this Board to grant relief.

w. This Board's decision was arbitrary and capricious. This Board's decision fails to take into account the applicant's PTSD and the advisory opinion which concluded that her PTSD was a mitigating factor that excused her non-performance.

x. The United States Supreme Court stated the following to determine whether an agency's decision is arbitrary and capricious:

y. Normally , an agency rule would be arbitrary and capricious if the agency has relied on factors Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that run counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

z. This Board entirely failed to consider the severity of the applicant's PTSD. According to the advisory opinion referenced in the Board's decision, the medical officer concluded that the applicant's PTSD was a mitigating circumstance which excuses her non-performance. However, in the Board's discussion portion, the Board did not consider how her PTSD affected her ability to perform under the ROTC contract. Nor did the Board acknowledge the advisory opinion's conclusion demonstrating that the Board completely failed to consider her PTSD as a mitigating factor in accordance with Secretary Hagel's memorandum. The Board merely mentioned the advisory opinion in its facts without applying it in the Board's decision.

aa. This Board should find that its previous decision was arbitrary and capricious because there is no reference to PTSD in the discussion portion. Also, the Board failed to acknowledge how the applicant's PTSD affected her ability to perform under the ROTC contract and is therefore, the decision is arbitrary and capricious.

bb. This Board should reconsider its previous decision. The applicant now comes forth with new arguments which this Board failed to consider. This Board failed to consider the doctrine of impracticability as it relates to the applicant's ROTC contract. The applicant suffered from PTSD, which severely interfered with her ability to perform the ROTC contract rendering performance unpracticable. Furthermore, this Board rendered an arbitrary and capricious decision when this Board did not consider her PTSD as a mitigating factor excusing her ability to perform. The advisory opinion submitted to this Board concluded that the applicant's PTSD excused her performance; however, this Board makes no mention of the applicant's PTSD nor the advisory opinion in its discussion.

3. A review of the applicant's record shows she completed a DA Form 597-3 on 31 July 2013. In doing so she agreed to receive pay scholarship benefits for a period of four academic years, including full tuition and fees, books and laboratory expenses, and monthly subsistence, at the [REDACTED] in exchange for an appointment as a Reserve Officer of the Army upon successful completion of all academic, military, and other requirements of the Army ROTC program. The applicant further agreed to the following terms outlined in her contract:

a. Part II-Paragraph 3a, Additional Terms and Conditions-Disclosure of Disqualifying Conditions states, in part, by executing this contract, the cadet represents that they meet all eligibility criteria for contracting in the ROTC Program and commissioning, as defined by statute, Army regulation, and this contract. The cadet represents that they have disclosed or will disclose any and all pre-existing medical conditions and non-medical conditions that would make them ineligible for enrollment in the ROTC program as specified in statute, Army regulations (including but not limited to AR 145-1), and this contract. If they are ineligible for contracting in ROTC based on a particular medical or non-medical condition, but such ineligibility may be waived, they must obtain an approved waiver before executing this contract. Failure to have disclosed or to disclose any disqualifying condition including any conditions they should have known about, will subject them to disenrollment from the ROTC program and possible recoupment of scholarship benefits.

b. Part II-Paragraph 5b, Terms of Disenrollment-I agree to reimburse the United States Government, states that if the cadet were disenrolled from the ROTC program for any reason, the Secretary of the Army could order the cadet to reimburse the United States the dollar amount plus interest that bears the same ratio to the total cost of the scholarship financial assistance provided by the United States to the cadet as the unserved portion of active duty bears to the total period of active duty the cadet agreed to serve or was ordered to serve.

c. Part II-Paragraph 6, Enlisted Active Duty Service Obligation, states that if she were called to active duty for breach of contract under the provisions of paragraph 5,

she would be ordered to active duty for two years if the breach occurred during Military Science (MS) II; for three years if the breach occurred during MS III; or for four years if the breach occurred during MS IV.

4. She enlisted in the U.S. Army Reserve as a cadet on 1 August 2013.
5. On 13 March 2016, the applicant was notified that she would be disenrolled and discharged from the ROTC Program due to her failure to maintain a minimum semester academic grade point average of 2.0 on a 4.0 scale and for having an indifferent attitude as demonstrated by her established pattern of shirking. It further states when the ROTC scholarship contract is breached, any obligation to the Army must be satisfied by repaying the cost of advanced education assistance provided by the Army. The total amount of monies spent in support of her education was \$89,517.00.
6. The applicant was discharged from the U.S. Army Reserve (USAR) Control Group (ROTC) effective, 31 March 2016.
7. The applicant provided:
 - a. Medical records, 1 June 2011, related to a Well Woman appointment, which shows she had a spontaneous miscarriage in April 2011.
 - b. Several documents related to her enrollment and disenrollment from the ROTC Program. These documents include a Cadet Waiver, 29 January 2016, wherein, after being fully advised and informed, she knowingly and voluntarily acknowledged and admitted that she breached the terms of her ROTC contract. She also declined a delayed call to active duty or an expedited call to active duty and elected to irrevocably waive her right to:
 - a hearing before the Board President
 - personally appear at the hearing
 - challenge the existence of a valid contract between herself and the Army ROTC
 - respond to and deny the allegations that she breached the terms of her ROTC contract
 - present witness, evidence and other information in her own defense
 - dispute the basis for disenrollment
 - dispute the amount and validity of any indebtedness to the U.S Government
 - dispute or influence the approving authority's final decision on whether to disenroll her
 - request forgiveness in whole or in part of her indebtedness
 - the assistance of non-lawyer counsel or licensed legal counsel of her choice to assist her in this matter

- having the Commanding General, or designee, reconsider her case and or make a supplement recommendation or provide additional input/information whatsoever to any appellate agency on her behalf

c. A VA Rating Decision, 30 November 2017, which shows her PTSD with bulimia nervosa (also claimed as anxiety) is service connected and has an evaluation of 70 percent. On 4 January 2021, the VA increased the rating for this condition to 100 percent.

d. Academic transcripts issued on 6 December 2017. This transcript shows an overall grade point average of 3.11.

e. The applicant's affidavit, 13 August 2021 wherein she states, in effect, that she was awarded a Green to Gold scholarship. She started off well academically, making the Dean's List for three straight semesters. She contends that her commanding officer convinced her, against her wishes, to change her major from Digital Media Management to Finance and to join the active duty versus the Army National Guard. She tried to make this work, but she was overwhelmed with her past experience on active duty. Collectively, these things pushed her to the breaking point. During this time her alcohol use increased substantially from heavy drinking to at least a bottle a night and continued to increase after that. She fell into a depression in the Fall of 2015, and she ended up failing a class, something she had never done before. In the Spring of 2016, she failed two classes and was recommended for disenrollment. She contends that she was advised to waive her rights because she had no desire to continue in the ROTC program or return to active duty. She was also told that it was unlikely that she would be made to repay the full amount of her tuition. She agreed to waive her rights and was required to repay her full tuition. If she had a better understanding of the consequences of her decision, she would have hired a lawyer to argue for a medical disenrollment due to her MST. In 2017, she lost her scholarship and her opportunity to become an officer. In 2021, the VA rated her for PTSD with alcohol use disorder, bulimia, nervosa, and anorexia was increased from 70 percent to 100 percent. She was given the option to reenlist in order to pay off the debt with service or incur a monetary debt. Due to her MST, she could no longer envision serving the Army in an enlisted status. Her debt is in excess of \$120,000.00.

f. Previous legal brief, 28 August 2021, wherein counsel contended that the applicant should have been medically disenrolled due to the MST that was caused by her active duty service would have relieved her from having to repay her education debt or reenlist.

g. A medical diagnosis from a licensed LCSW, 12 October 2023, for PTSD, chronic; bulimia nervosa; and adult physical abuse by non-spouse confirmed, subsequent encounter.

8. The Board should consider the applicant's overall record and provided statement in accordance with the published equity, injustice, or clemency determination guidance.
9. Title 10, U.S. Code, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.
10. By regulation scholarship Cadets may be disenrolled from the ROTC Program due to breach of contract. 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.
11. The ABCMR will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a medical disability retirement for PTSD at no less than 30 percent. She is also requesting a change to the reason for her disenrollment from the ROTC program from academic to medical. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Pertinent to this advisory are the following: 1) The applicant enlisted in U.S. Army Reserve as a cadet on 1 August 2013 after service in the Regular Army; 2) On 13 March 2016, the applicant was notified that she would be disenrolled and discharged from the ROTC Program due to her failure to maintain a minimum semester academic grade point average of 2.0 and for having an indifferent attitude as demonstrated by her established pattern of shirking; 3) The applicant was discharged from the U.S. Army Reserve (USAR) Control Group (ROTC) effective, 31 March 2016.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the supporting documents and the applicant's available military service and medical records. The Armed Forces Health Longitudinal Technology Application (AHLTA), the VA's Joint Legacy Viewer (JLV), and civilian medical records provided by the applicant were also examined.

c. The applicant asserts she incurred a psychiatric disability, which warrants a referral to IDES and medical discharge for PTSD. She is also requesting a change to the reason for disenrollment from the ROTC program from academic to medical. There is sufficient evidence the applicant had a history of behavioral health treatment for mental health conditions and substance/alcohol abuse/dependence during her service in the Regular Army. She initially started in military substance abuse treatment on 03 March 2010 and continued in treatment till May 2010. She was diagnosed with Alcohol Dependence and Cocaine Abuse. There was insufficient information provided on the reasons why the applicant discontinued treatment for these conditions. In April 2011, the applicant began to engage in behavioral health treatment for symptoms of anxiety and stress. She also reported a long history of behavior associated with bulimia nervosa. The applicant engaged in regular individual therapy for anxiety and bulimia nervosa. She demonstrated notable improvement in symptoms and behaviors associated with bulimia nervosa, and she continued in treatment till June 2013. She also attended counseling at the Family Advocacy Program from May-June 2013 related to relationship discord and intimate partner violence, but this treatment was only individual therapy. There was insufficient evidence the applicant required inpatient treatment, was ever placed on a psychiatric profile, or was found to not meet medical retention standards from a psychiatric perspective.

d. A review of JLV provided evidence the applicant began to engage with the VA for behavioral health care in 2017. She was again reporting anxiety, alcohol abuse, a history of MST, PTSD symptoms, and stress related to her removal from her ROTC program and resulted debt. The applicant was later in 2017 diagnosed with service-connected PTSD as a result of her experience of MST and VA disability related to this condition (70% SC). The applicant also provided civilian medical documentation from October 2023 from the applicant's regular therapist (an LCSW) from 2021-2023. The applicant was noted to be currently diagnosed with PTSD due to trauma that occurred prior to her enlistment in the military, during her Regular Army service, and while enrolled in ROTC. The applicant was also noted to have experienced MST. While the applicant's therapist stated she was not the applicant's provider at the time she was in attendance in the ROTC program, the therapist did state she felt the applicant met criteria for PTSD at that time. In addition, she felt the condition impacted her ability to maintain her academic responsibilities.

e. Based on the available information, it is the opinion of the Agency BH Advisor that the applicant experienced significant mental health conditions and MST, while on active service. However, she was noted to have improved and then accepted into the Green to Gold program after being released from the Regular Army to serve as an ROTC Cadet. The applicant reports a history of trauma including MST which resulted in PTSD. Yet, she asserts this mental health condition had a delayed onset, and she later, after being enrolled in the ROTC program, began to deteriorate as a result of PTSD, and became unable to maintain her occupational responsibilities. Thus, there is sufficient evidence

the applicant was diagnosed with service-connected PTSD, and this condition could have impacted her ability perform her occupational responsibilities. However, there is insufficient evidence the applicant was found to not meet medical retention standards for any psychiatric condition including PTSD, and therefore, the case does not meet criteria to warrant a referral to IDES at this time.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Partially, the applicant experienced significant mental health conditions and MST, while on active service. However, she was noted to have improved and then accepted into the Green to Gold program after being released from the Regular Army to serve as an ROTC Cadet. The applicant reports a history of trauma including MST which resulted in PTSD. Yet, she asserts this mental health condition had a delayed onset, and she later, after being enrolled in the ROTC program, began to deteriorate as a result of PTSD, and became unable to maintain her occupational responsibilities. Thus, there is sufficient evidence the applicant was diagnosed with service-connected PTSD, and this condition could have impacted her ability perform her occupational responsibilities. However, there is insufficient evidence the applicant was found to not meet medical retention standards for any psychiatric condition including PTSD, and therefore, the case does not meet criteria to warrant a referral to IDES at this time.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board made the following findings and recommendations related to the requested relief:

- Medical Retirement: DENY, based upon the available documentation and the findings and recommendation in the medical review.
- Justification for disenrollment from ROTC: DENY, based upon the findings outlined in the medical review.
- Cancellation of ROTC debt: DENY, based upon the terms of the ROTC agreement and the evidence showing the applicant failed to meet the minimum grade point average outlined in the agreement.

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.

10/9/2024

 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, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation (AR) 145-1, Reserve Officers' Training Corps-Senior ROTC Program Organization, Administration, and Training, prescribes policies and general procedures for administering the Army's Senior ROTC Program.
 - a. The medical fitness standards prescribed in AR 40-501, Medical Services-Standards of Medical Fitness, chapter 2, will be used to determine a Cadet's medical fitness for enrollment, continuation in the advanced course, and appointment.

b. The CG, ROTCCC may grant (authority may not be delegated) waivers only when the medical condition or physical defect:

(1) Is static in nature or, for prior service applicants, no longer exists.

(2) Will not preclude satisfactory completion of ROTC training (including camp training).

(3) Will not be complicated or aggravated by ROTC training or by military training and duty after appointment.

c. The medical fitness standards applicable at the time of enrollment in the advanced course will apply to any later medical examination, including examination for appointment.

d. If no waiver is granted, a cadet enrolled in the SROTC Program who is found medically disqualified (except as specified in paragraph 3-25, Temporary Medical Disqualification) will be disenrolled.

e. Nonscholarship and scholarship Cadets will be disenrolled for the following reasons:

(1) The 4-year scholarship cadets may be disenrolled at their own request during the MS I only.

(2) Medical disqualification (to include pregnancy if complications exist) when determined and approved by Headquarters ROTCCC, or higher authority. A medical condition that precludes appointment will be cause for disenrollment.

(3) 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.

(4) Indifferent attitude or lack of interest in military training as evidenced by frequent absences from military science classes or drill, an established pattern of shirking, failure to successfully complete an established weight control program, or similar acts.

(5) 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.

f. Disenrollment for medical reasons will be referred to CG, ROTCCC for review and approval.

3. U.S. Cadet Command Pamphlet 145-4, Enrollment, Retention, and Disenrollment Criteria, Policy, and Procedures, dated 1 April 2020, prescribes the standards for participants in the Senior ROTC program.

a. Scholarship applicants/cadets must be fully qualified at the time of contracting; therefore a waiver for any disqualify condition must be approved prior to contracting.

b. Requests for waiver will be submitted immediately for a disqualifying condition that existed prior to contracting but not discovered until after contracting.

c. The student is responsible for initiating any request for waiver of contracting eligibility requirements.

4. AR 37-104-3, Finance Update, provides the policies and provisions for entitlements and collections of pay and allowances of military personnel. Chapter 59 currently in effect, provides for recoupment of educational expenses, e.g., ROTC, United States Military Academy, and advanced civilian schooling under a previous agreement when obligated active duty service has not been completed.

5. Title 10, U.S. Code, section 1552 states the Secretary of a military department may correct any military record of the Secretary's department when the Secretary considers it necessary to correct an error or remove an injustice. Except when procured by fraud, a correction under this section is final and conclusive on all officers of the United States.

6. DOD Financial Management Regulation 7000.14-R, Volume 7A, Military Pay Policy and Procedures – Active Duty and Reserve Pay, governs active duty and reserve military pay. Chapter 2 (Repayment of Unpaid Portion of Bonuses and Other Benefits), paragraph 020204 (Conditions under review by the Secretary of the Military Department), provides that under circumstances not specifically mentioned in this chapter, the Secretary of the Military Department concerned has the discretion to, at some point in the process, render a case-by-case determination that the member's repayment of, or the Military Department's full payment of an unpaid portion of, a pay or benefit is appropriate based on the following:

- contrary to a personnel policy or management objective
- against equity and good conscience
- contrary to the best interest of the United States

7. Title 38, U.S. Code, section 1110, General - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
8. Title 38, U.S. Code, section 1131, Peacetime Disability Compensation - Basic Entitlement: For disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty, in the active military, naval, or air service, during other than a period of war, the United States will pay to any veteran thus disabled and who was discharged or released under conditions other than dishonorable from the period of service in which said injury or disease was incurred, or preexisting injury or disease was aggravated, compensation as provided in this subchapter, but no compensation shall be paid if the disability is a result of the veteran's own willful misconduct or abuse of alcohol or drugs.
9. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records on 25 July 2018, regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.
 - a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.
 - b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

10. Title 10, U.S. Code, section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the Army Review Boards Agency (ARBA) be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

11. 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 will decide cases on the evidence of record. It is not an investigative body. 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. Additionally, applicants may be represented by counsel at their own expense.

//NOTHING FOLLOWS//