

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000704

APPLICANT REQUESTS: remission/cancellation of indebtedness from disenrollment from the Reserve Officers' Training Corps (ROTC).

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

- DD Form 149 (Application for Correction of Military Record)
- Orders Number 328-012, 24 November 2017
- Orders Number 237-084, 24 August 2020
- Orders Number 0001468501.00, 20 October 2021

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, in part, he was assessed a debt from disenrollment from the ROTC program. He was told that if he served two years of active duty the debt would be discharged. He joined the Minnesota Active Guard/Reserve (AGR) on 1 December 2017 and is still currently serving. He has nearly six years of service with the intent to continue his career after 2025.

3. A review of the applicant's available service record reflects the following:

a. On 23 March 2007, he enlisted in the Minnesota Army National Guard (MNARNG).

b. DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) dated 28 August 2008 shows he enrolled in the University of St. Thomas ROTC program, at full tuition, for 3 years. Part II (Agreement of Scholarship Cadet Contracting in the Senior Program) shows in item d (Academic Grade Point Average (GPA) he agreed to maintain a GPA of 2.0 on a 4.0 or equivalent scale. He understood that failure to maintain the minimum academic GPA may subject him to disenrollment from the ROTC

program. He also agreed to meet and maintain the Army Physical Fitness Test (APFT) standard and the screening weight or body fat percentage required by the Army Weight Control Program as required by active duty Soldiers.

c. On 12 August 2011:

(1) DD Form 785 (Record of Disenrollment form Officer Candidate – Type Training) shows his disenrollment for a GPA below 2.0.

(2) Headquarters, United States Army Cadet Command, Commanding General issued a Memorandum for Disenrollment from the U.S. Army ROTC Program for failure to maintain an academic GPA of 2.0 on a 4.0 scale, failure to maintain APFT standards, and failure to meet height and weight standards. He was assessed a debt in the amount of \$53,587.14.

d. On 24 October 2011, he enlisted in the MNARNG for a period of 6 years.

e. On 5 December 2011, the Department of Defense, Military Entrance Processing Station issued Orders Number 2003007 ordering him to initial active duty training, effective 3 January 2012, and upon completion, advanced individual training, effective 21 March 2012.

f. DD Form 214 (Certificate of Release or Discharge from Active Duty), ending on 11 May 2012 reflects an honorable release from active duty training for completion of required active service. Item 12 (Record of Service) shows service from 3 January 2012 to 11 May 2012 for a net active service this period of 4 months and 9 days.

g. DA Form 4836 (Oath of Extension of Enlistment or Reenlistment), dated 21 June 2017 shows he extended his enlistment with the MNARNG for a period of 2 years.

h. DA Form 4836, dated 14 November 2017 shows he extended his enlistment with the MNARNG for a period of 2 years.

i. On 24 November 2017, the State of Minnesota, Department of Military Affairs, Office of the Adjutant General issued Orders Number 328-012 ordering him to active duty in an AGR status for the period of 1 December 2017 to 30 November 2020.

j. On 24 August 2020, the State of Minnesota, Department of Military Affairs, Office of the Adjutant General issued Orders Number 237-084 ordering him to active duty in an AGR status for the period of 1 December 2020 to 23 October 2021.

k. DA Form 4836, dated 9 December 2020 shows he extended his enlistment with

the MNARNG for a period of 3 years.

l. DA Form 4836, dated 27 January 2021 shows he extended his enlistment with the MNARNG for a period of 1 year.

m. He continues service with the MNARNG.

4. The applicant provides Orders Number 0001468501.00, dated 20 October 2021 showing his permanent change of assignment as a health care sergeant with Headquarters and Headquarters Battery, 1st Battalion, 125th Field Artillery.

5. On 16 May 2024, Headquarters, United States Army Cadet Command, Deputy Chief of Staff for Personnel, G-1, provided an advisory opinion recommending disapproval of the applicant's request stating:

a. The former Cadet was disenrolled from the Army ROTC Program on 12 August 2011 in accordance with Army Regulation (AR) 145-1 (Senior ROTC Program: Organization, Administration, and Training), paragraphs 3-43a(6) and (16), based on his failure to maintain a minimum semester academic GPA of 2.0 on a 4.0 scale and failure to maintain APFT standards and height and weight standards. He declined to accept active duty under the terms of the ROTC contract. Therefore, he was directed to repay \$53,587.14 in scholarship funds spent on his education.

b. In accordance with the terms of the ROTC contract, any subsequent enlistment in the Armed Service does not relieve the former Cadet of his obligation to repay the educational benefits spent on his behalf. On 12 November 2010, when offered the opportunity to serve on active duty in lieu of monetary repayment, he declined. Therefore, his request to have his scholarship debt waived cannot be approved by the Commanding General as he is not authorized to waive a properly established debt resulting from a breach of the ROTC contract.

c. In support of the advisory opinion, they provided the ROTC disenrollment packet which included the supporting documents applicable to his disenrollment at the time. The entire disenrollment packet is available in the supporting documents for the Board's review.

6. On 17 May 2024, the Office of the Deputy Chief of Staff, G-1, Financial Management Specialist, Military Pay Branch, provided an advisory opinion recommending disapproval of the applicant's request stating, in pertinent part, after careful review, they recommend that the Board disapprove the applicant's request for discharge of debt. He disenrolled from the ROTC program on 12 August 2011. He declined to accept active duty under the terms of the ROTC contract. Therefore, he was directed to repay \$53,587.14 in scholarship funds spent on his education.

7. On 28 May 2024, the applicant was provided a copy of the advisory opinions and afforded an opportunity to respond. As of 13 June 2024, he did not respond.

BOARD DISCUSSION:

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 counsel's statement, 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, available military records and Headquarters, U.S. Army Cadet Command- Deputy Chief of Staff for Personnel, G-1- Financial Management Specialist Military Pay Branch advisory opinion, the Board concurred with the advising official recommendation of denial finding the applicant declined to accept enlistment into active-duty under the terms of his ROTC contract after being disenrolled from the ROTC program. The Board noted, based on the applicant's actions of declining active duty, he incurred a debt from his ROTC scholarship in the amount of \$53, 587.14. The Board agreed, there is insufficient evidence to support the applicant contentions for remission/cancelation of indebtedness from disenrollment from the Reserve Officers' Training Corps (ROTC). Therefore, the Board denied relief.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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| : | : | : | 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.

[REDACTED]

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

a. Paragraph 3-31 (Introduction) states the Army ROTC Scholarship Program provides financial assistance to those students who have demonstrated academic excellence and leadership potential. The U.S. Army Scholarship Program's purpose is to provide for the education and training of highly qualified and motivated young men and women who have a strong commitment to military service as commissioned officers.

b. Paragraph 3-43 (Disenrollment) (a)(16) states a scholarship cadet may be disenrolled only by the Commanding General, ROTC Cadet Command. A cadet may be disenrolled for breach of contract (including formerly used term willful evasion). (Note: Breach is defined as any act, performance or nonperformance on the part of a student that breaches the terms of the contract regardless of whether the act, performance or

nonperformance was done with specific intent to breach the contract or whether the student knew that the act, performance or nonperformance breaches the contract).

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. Title 10, USC, section 2005(a), states

a. 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 under the terms of which such person shall agree: (1) to complete the educational requirements specified in the agreement and to serve on active duty for a period specified in the agreement and (2) that if such person fails to complete the education requirements specified in the agreement, such person will serve on active duty for a period specified in the agreement.

b. States the Secretary concerned shall require that the person enter into the agreement described in subsection (a). In addition to the requirements of paragraph (1) through(4) of such subsection, the agreement shall specify that, if the person does not complete the education requirements specified in the agreement or does not fulfill any term or condition prescribed pursuant to paragraph (4) of such subsection, the personal shall be subject to the repayment provisions of section 303a(e) (Repayment of Unearned Portion of Bonuses and Other Benefits When Conditions of Payment Not Met; Termination of Entitlement to Unpaid Amounts) or 373 (Repayment of unearned portion of bonus, incentive pay, or similar benefit, and termination of remaining payments, when conditions of payment not met) of title 37 without the Secretary first ordering such person to active duty as provided for under subsection (a)(2) and sections 2107 (Financial assistance program for specially selected members)(f) and 2107a(f).

5. 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 on the basis of this regulation in cases arising from debts incurred while serving on active duty or in an active status as a Soldier.

//NOTHING FOLLOWS//