

IN THE CASE OF: [REDACTED]

BOARD DATE: 21 January 2025

DOCKET NUMBER: AR20240004296

APPLICANT REQUESTS: reconsideration of his previous request for remission of his Reserve Officers' Training Corps (ROTC) debt, and removal of all mention of the debt from his military service record.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief (9 pages)
- Army Service Records (37 pages), dated 4 March 2013 to 23 August 2021
- Defense Finance and Accounting Service (DFAS) correspondence and associated documents (19 pages), dated 27 November 2015 to 27 October 2023
- Department of Veterans Affairs (VA) Rating Decision, dated 30 November 2022
- statements of support (3), dated 9 January to 12 January 2024

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 AR20170008756 on 20 August 2019.

2. Counsel states:

a. In 2013, the applicant enrolled in ROTC, in early 2015 his roommate removed a bench from a common area and placed it in their shared apartment. The incident led to an investigation for both the applicant and his roommate for conduct unbecoming an officer and gentleman, which resulted in disenrollment from ROTC.

b. Throughout the disenrollment proceedings, the applicant elected active enlisted service as a means of repaying his education costs. However, he did not receive the addendum outlining his options, as referenced in the notification; nor did he receive notification of his final disenrollment and subsequent separation from the Army.

c. In an attempt to address the debt, he entered into an established payment plan with DFAS in 2015. Under the belief that enlisted active service would satisfy the debt,

he dropped out of college and enlisted in the Army in 2016. He requested that DFAS suspend his account and permit active duty in lieu of repayment. He was notified that DFAS suspended the account which would extend throughout his time in service. However, interest and penalties continued to accrue.

d. While deployed to Iraq in 2020, the applicant fractured his tibia/fibula. He was eventually found physically unfit for continued service due to a combat-related injury. He was medically retired and honorably discharged in 2021. He has a current service-connected disability rating with the VA at 90 percent (%).

e. In July 2023, he was notified by DFAS of a debt owed to the Department of Defense in the amount of \$92,510.79. He established an approved payment plan and has currently paid \$5,531.48 towards the debt. The recoupment of his advanced education costs is materially erroneous as the Army has already recouped the costs through his more than 5 years of active duty service. After fulfilling his initial contract, he reenlisted and continued to serve until a combat-related injury rendered him unfit. The imposed \$92,500.00 debt creates a significant hardship for him, as his service-connected disabilities render him only 10% employable.

f. He should not have been held responsible for the conduct of his roommate. The incident was not egregious. Nor was it the kind of conduct that should warrant disenrollment. The applicant relied on assurances from persons in authority that his active service would serve as reimbursement. His commitment, selfless service, and subsequent medical discharge from the Army are significant mitigating factors that warrant correction of his records.

3. The applicant enlisted in the U.S. Army Reserve on 4 March 2013 as a cadet in the [REDACTED] University ROTC program. The relevant DA Form 597-3 (Army Senior ROTC Scholarship Cadet Contract) shows, in pertinent part, that the applicant understood if he was disenrolled from ROTC, the Secretary of the Army, or his or her designee, retained the prerogative to either order him to active duty or order monetary repayment of his scholarship benefits. Therefore, if he were required to repay his advanced educational assistance under the terms of the contract, his subsequent enlistment in an Armed Service would not relieve him from the repayment obligation.

4. The applicant was notified on 9 April 2015 that his disenrollment from the ROTC program was being initiated based upon his undesirable character. He was informed of the rights available to him and that the final decision on his disenrollment and recoupment of indebtedness would be rendered by the Commanding General (CG), U.S. Army Cadet Command (USACC).

5. On 7 July 2015, the CG, Headquarters, USACC, Fort Knox, KY, disenrolled the applicant and directed he be discharged from the ROTC program under the provisions

of Army Regulation 145-1 (Senior ROTC Program: Organization, Administration, and Training), paragraph 3-43a(14).

a. The applicant's disenrollment was based upon his undesirable character as demonstrated by lying, stealing, and discreditable incidents with university authorities. He was informed that the total amount of monies spent in support of his education was \$66,700.00. His obligation to the Army must be satisfied by repaying the cost of his advanced educational assistance.

b. He was instructed to elect to pay the total amount in a lump sum or initiate a repayment plan. If his election were not received within 14 days of receipt of the disenrollment letter, he could be subject to involuntary collection action.

6. The applicant completed a Voluntary Repayment Agreement (VRA) for payment by installment and a Financial Hardship Application (FHA) on 27 November 2015. On 24 December 2015, his payment plan was approved, and his payment of \$1,000.00 per month was set to continue until 26 November 2016.

7. Email correspondence from DFAS shows the applicant made four payments between 4 December 2015 and 15 April 2016, totaling \$5,381.48, leaving a remaining balance of \$64,258.00.

8. The applicant enlisted in the Regular Army on 18 May 2016, in the rank/grade of private first class/E-3. Upon completion of initial entry training, he was awarded military occupational specialty 11B (Infantryman). The highest rank he would attain was sergeant/E-5.

9. Email correspondence between the applicant and DFAS, dated 5 May 2016 and 26 September 2016, shows the applicant notified DFAS of his current enlisted active duty service and requested his account be placed in temporary suspense. He inquired as to whether or not the suspense would begin his active duty service in lieu of repayment of his education debt. He was informed that his account was placed in suspense until 2 June 2017 for service "in lieu of." He notified DFAS on 22 September 2016, that he was still receiving a bill and accruing interest and penalties. He was assured his account was placed in suspense and that the computer automatically sent out monthly statements.

10. The applicant reenlisted in the Regular Army on 11 June 2018, for a 4-year period.

11. On 20 August 2019, the ABCMR considered the applicant's request to have his DFAS debt suspended or terminated. After careful consideration, the Board found insufficient evidence of an error or injustice that would warrant making a change to the collection of the applicant's debt. His request for relief was denied.

12. The applicant served in Iraq from 6 January 2020 until 8 February 2020 in support of Operation Inherent Resolve.

13. A Patient Movement Record shows that on 24 June 2020, while out on patrol, the applicant injured his leg while walking down an embankment. Upon examination, it was determined he had a right closed tibia/fibula fracture. He underwent a closed reduction with the placement of an ankle spanning external fixator and was transferred to Landstuhl, Germany, for definitive fixation.

14. The applicant underwent a Medical Evaluation Board at Fort Bragg, NC, and was subsequently referred to a Physical Evaluation Board (PEB). The PEB convened on 16 June 2021, and determined the applicant was physically unfit for continued service. The board recommended a disability rating of 40% and a final disposition of permanent disability retirement. The applicant concurred with the findings and waived a formal hearing.

15. The applicant was honorably discharged on 23 August 2021, under the provisions of Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), Chapter 4, by reason of disability – combat related, with separation code SEA and reentry code RE-4. He completed 5 years, 3 months, and 6 days of net active service. He was awarded or authorized the following:

- Army Commendation Medal with “C” device
- Army Achievement Medal (3rd award)
- Army Good Conduct Medal
- National Defense Service Medal
- Global War on Terrorism Service Medal
- Noncommissioned Officer Professional Development Ribbon
- Army Service Ribbon
- Military Horseman Identification Badge
- Parachutist Badge
- Inherent Resolve Campaign Medal with campaign star

16. The applicant provides the following:

a. 37 pages of Army Service Records, dated 4 March 2013 to 23 August 2021, are summarized, in pertinent part, in the Record of Proceedings above.

b. A VA Rating Decision and benefits letter, shows the applicant has a combined service-connected disability rating of 90%, effective 14 November 2022.

c. Additional DFAS correspondence and associated documents show that the applicant was notified on 17 July 2023 that his account was in default, with a past due

balance of \$92,510.79. He completed new VRA/FHA applications on 10 August 2023, the determination of which are not available for review.

d. In three statements of support, dated 9 January to 12 January 2024, the authors recommend the applicant's debt be forgiven. They believe he was unfairly removed from the ROTC program due to the actions of his roommate. He served honorably in the Old Guard and with the 82nd Airborne Division, sustaining a lifelong injury while on a rapid deployment to Iraq. He has done more than enough in service to his country to fulfill his debt. He continues to serve as a sheriff's deputy in his community.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the original reason for the applicant not fulfilling his ADSO being based upon undesirable character (misconduct), the Board concluded there was insufficient evidence of an error or injustice warranting relief of the applicant's ROTC debt.

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.

5/4/2025


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 (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.

2. Army Regulation 145-1 (Senior Reserve Officers' Training Corps (ROTC) Program, Organization, Administration and Training) provides that a scholarship cadet may be disenrolled only by the Commanding General, ROTC Cadet Command. The Commanding General, ROTC Cadet Command, is the only authority for discharge of scholarship cadets. ROTC cadets normally will be honorably discharged on the date of

disenrollment from the ROTC program, except those ordered to active duty under the terms of their ROTC contract. If not academically enrolled, the cadet will be ordered to active duty 60 days from date of notification of active duty.

a. Cadets assigned to the U.S. Army Reserve (USAR) Control Group (ROTC) may be discharged or separated for the convenience of the Government for termination of a scholarship.

b. Cadets assigned to the USAR Control Group (ROTC), who are 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.

c. Scholarship students may be required to repay all or part of their scholarship financial assistance.

d. Paragraph 3-43 (Disenrollment Criteria) subparagraph (a.) provides that a breach of contract 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. When cadets are found to be in breach of their service agreements, under the terms of such contracts their obligation to the Army may be satisfied through enlisted active-duty service or through recoupment of the cost of advanced educational assistance provided by the Army.

e. Paragraph 3-44 (Discharge and Separation from the USAR) provides that cadets called to active duty for breach of the terms of their ROTC contract will serve periods of active duty as specified in their contract.

3. Army Regulation 340-21 (The Army Privacy Program) paragraph 2-10 (Amendment of Records) states individuals may request the amendment of their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgement, irrelevant, untimely, or incomplete. Consideration of a request for amendment would be appropriate if it can be shown that circumstances leading up to the event recorded on the document were challenged through administrative procedures and found to be inaccurately described.

4. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) provides that an ROTC cadet assigned to Control Group (ROTC) or participating in the Simultaneous Membership Program who desires to enlist in the Regular Army, to include the Mandatory Service Obligation (MSO) delayed status, may enlist if he or she:

- has received clearance from the appropriate Professor of Military Science (PMS) or ROTC region commander
- DD Form 368 (Request for Conditional Release) is used for this purpose, and it must be in possession of the recruiting officials before processing the cadet for enlistment
- has obtained a DD Form 368 from the Army National Guard or USAR unit commander, as well as the appropriate PMS or ROTC region commander, if the cadet is a participant in the SMP
- has not been alerted for order to Active Duty (AD) under a Presidential call-up or a partial or full mobilization
- has not been notified of orders directing involuntary order to AD
- is not an ROTC scholarship recipient

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

6. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) governs the evaluation of physical fitness of Soldiers who may be unfit to perform their military duties because of physical disability and establishes the Army Physical Disability Evaluation System.

//NOTHING FOLLOWS//