

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 March 2025

DOCKET NUMBER: AR20240008205

APPLICANT REQUESTS:

- remission, cancellation, or waiver of his Reserve Officers' Training Corps (ROTC) debt
- reimbursement of monies paid into the debt
- a 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)
- Non-Scholarship ROTC Disenrollment Packet
- Orders Number 135-1, 15 May 2014
- Defense Finance and Accounting Service (DFAS) Collection of Debt Notification 21 September 2014
- DFAS Collection of Debt Notification, 22 October 2014
- Approved Temporary Student Deferment Letter, 27 February 2015
- AF IMT 766 Form (Extended Active Duty Orders) dated 22 September 2023

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, 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 he was in Army ROTC and withdrew from school; he is currently paying back the amount of financial assistance that he was given while enrolled in ROTC, in monthly installments. He is requesting that these monthly payments cease, the debt that he owes annulled, and the amount that he has paid to this point be returned. He is requesting that his debt be paid with his current active-duty service in lieu of further payments. As of October of 2023, he is an active-duty Air Force officer and nurse. He was told by DFAS initially to submit a ticket once he had started his active-duty service to have them change the debt. He did that after starting at Air Force

Officer Training School (OTS) and once the ticket was processed, he was told to go to the base finance office to have the debt corrected. The Lackland Air Force Base finance office instructed him to complete and submit this form with all other documentation for correction of his record.

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

a. DD Form 785 (Record of Disenrollment from Officer Candidate - Type Training) dated 26 August 2013 shows the applicant entered Army ROTC on 31 August 2010. He was disenrolled from the Army ROTC program at San Diego State University on 25 July 2013 for not achieving the minimum Grade Point Average (GPA) of 2.0. On 13 August 2013, he acknowledged his disenrollment from the Army ROTC program; he was recommended as an average candidate for future acceptability for other officer training.

b. On 24 October 2014, the applicant enlisted in the Montana Army National Guard (MTARNG) of the United States.

c. Orders Number 302-008 dated 29 October 2014, issued by the Joint Forces Headquarters, Montana Office of the Adjutant General attached the applicant to the Recruit Training Company, Missoula, Montana for administration, training, Uniform Code of Military Justice and pay.

d. On 24 February 2015, the applicant's commander notified him of his intent to separate him under the provisions of Chapter 8, Army Regulation (AR) 135-178 (Enlisted Administrative Separations) for entry level performance and conduct. The specific reasons for his proposed recommendation were based upon the applicant's refusal to ship to initial entry training causing a cancelation of his training seat, he missed scheduled drills as required, refused to meet with his site administrator to discuss further options and in a written correspondence stated that he no longer wishes to serve in the MTARNG. He acknowledged receipt of the notification of separation action on 17 April 2015.

e. After waiving his right to consult with legal counsel, he acknowledged:

- the rights available to him and the effect of waiving said rights
- he may encounter substantial prejudice in civilian life if a discharge under other than honorable conditions is issued to him
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading

f. On 23 April 2015, the commander initiated separation action against the applicant for entry level performance and conduct. The applicant displayed a lack of responsible effort to train or willingness to attend training or attend drill and did not make any

attempts to remain in contact with the site administrator and continued to refuse to ship. He recommended that his period of service be characterized as uncharacterized and recommended approval.

g. On 22 June 2015, consistent with the chain of command recommendations, the separation authority approved the discharge recommendation for immediate separation under the provisions of Chapter 8, AR 135-178 and National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management), paragraph 6-35e for entry level performance and conduct. He would be issued an uncharacterized discharge and not transferred to the Individual Ready Reserve.

h. National Guard Bureau Form 22 (Report of Separation and Record of Service) shows he entered service this period on 24 October 2014 and was discharged from the MTARNG with an uncharacterized characterization of service. It also shows he completed 8 months, and 29 days of service this period. He was assigned reenlistment eligibility code of RE-3 and the authority and reason for separation is listed as "NGR 600-200, 6-35e Entry level performance and conduct."

4. The applicant provides:

a. Non-Scholarship ROTC Disenrollment Packet (18 pages) indicating the applicant was notified on 30 January 2013 of disenrollment procedures under the provisions of AR 145-1 (Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training), paragraph 3-43a (6) based on his undesirable character as demonstrated by his failure to maintain a cumulative GPA of 2.0 or higher. The applicant requested to personally appear and respond at a hearing. On 14 January 2014, a hearing was convened, and the applicant presented evidence on his behalf. It was found that the applicant did enter a valid ROTC contract and received educational benefits of \$59,679.00. The Board recommended the applicant payback the amount of \$59,679.00. On 15 May 2014, the applicant's disenrollment from San Diego State University ROTC Program was complete.

b. On 14 May 2014, the Headquarters, U.S. Army Cadet Command and Fort Knox, Commanding General disenrolled the applicant from the ROTC program due to his failure to maintain a minimum semester GPA of 2.0 on a 4.0 scale in all ROTC courses. 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 \$59,679.00. A U.S. Army Advanced Education Financial Assistance Record (DA Form 5315-E) detailing the debt was provided to the applicant. He was also informed of the requirement to repay the ROTC debt and was afforded the option to repay the monies in a lump sum payment or to establish a repayment plan.

c. DFAS Collection of Debt Notification dated 21 September 2014 and 22 October 2014, which shows a total balance due in the amount of \$38,101.73.

d. DFAS-IN Debt and Claims statement which shows a total balance due:

- 21 September 2014 - the amount of \$59,679.00
- 22 October 2014 - the amount of \$59,728.95
- 24 November 2014 - the amount of \$59,792.11
- 9 November 2015 - the amount of \$60,356.08
- 22 January 2016 - the amount of \$60,475.32
- 3 January 2017 - the amount of \$61,034.49

e. Approved Temporary Student Deferment Letter dated 27 February 2015 deferred his debt of \$59,898.46 until 15 January 2016.

f. AF IMT 766 Form dated 22 September 2023, shows the Department of the Air Force ordered the applicant to active duty for an indefinite period and to attend OTS and the Nurse Transition Program under Special Order Number AH-1124.

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, available military record, the Board noted the applicant's contentions that his current active-duty service as an Air Force officer should satisfy his prior ROTC obligation and that his debt should therefore be annulled. Providing documentation of his disenrollment from Army ROTC at San Diego State University, DFAS debt notifications, and his current Air Force orders.

2. However, the Board found that he entered Army ROTC in August 2010, was disenrolled in July 2013 for failure to maintain the required minimum GPA, and acknowledged his disenrollment in August 2013. Evidence shows a disenrollment board determined he had entered into a valid ROTC contract, received \$59,679.00 in educational benefits, and was required to repay those funds. Headquarters, U.S. Army Cadet Command confirmed his disenrollment and the debt obligation in May 2014. The record further shows that the applicant enlisted in the Montana Army National Guard in October 2014 but was discharged in June 2015 with an uncharacterized characterization of service due to entry-level performance and conduct.

3. The Board determined that the applicant's ROTC debt was properly established under Army Regulation 145-1, which requires repayment of scholarship funds when a cadet fails to complete the program and does not fulfill the service obligation. The applicant did not complete ROTC, did not commission into the Army, and did not fulfill the contractual service requirement. His later enlistment in the National Guard was brief and ended in entry-level separation, which did not satisfy his ROTC obligation. While the applicant is now serving honorably in the Air Force, this service does not retroactively negate his prior Army ROTC contractual debt. The Board also noted that DFAS acted within its authority in establishing and collecting the debt, and there is no evidence of error or injustice in the process. Based on a preponderance of the evidence, the Board determined that the applicant's ROTC debt was validly incurred, properly adjudicated, and remains enforceable. The Board agreed, his current active duty service in another branch of the Armed Forces does not substitute for the prior contractual obligation. Therefore, the request for remission, cancellation, or waiver of the ROTC debt and reimbursement of monies paid is 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. 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. AR 15-185 (Army Board for Correction of Military Records (ABCMR)) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. In pertinent part, it states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. The ABCMR will decide cases based on the evidence of record. It is not an investigative agency. Additionally, it states in paragraph 2-11 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. AR 145-1 (Senior ROTC Program: Organization, Administration and Training) prescribes policies and general procedures for administering the Army's Senior Reserve Officers' Training Corps Program. It provides that a non-scholarship cadet may be disenrolled by the Professor of Military Science and a scholarship cadet may be disenrolled by the Commanding General, ROTC Cadet Command.
 - a. Scholarship students may be required to repay all or part of their scholarship financial assistance.

b. Paragraph 3-43a (Disenrollment) states, a non-scholarship cadet may be disenrolled by the Professor of Military Science (PMS). A scholarship cadet may be disenrolled only by the Commanding General, ROTC Cadet Command. Disenrollment authority does not include the discharge authority for Simultaneous Membership Program participants. Subparagraph a (16) provides that non-scholarship and scholarship cadets will be disenrolled for 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.

c. Paragraph 3-44a (Discharge and separation from the United States Army Reserve) states, the CG, ROTC Cadet Command, is the only authority for discharge of scholarship cadets. The Professor of Military Science, brigade commander or the region commander is the authority for discharging non-scholarship cadets (for exceptions see para 3-43). 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. Procedures governing disenrolled SMP participants are outlined in AR 601-210 (Regular Army and Reserve Components Enlistment Program) and National Guard Regulation (NGR) 600-200 (Enlisted Personnel Management).

4. Title 10, United States 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 (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.

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 Army. Requests for remission or cancellation of indebtedness must be based on injustice, hardship, or both. In accordance with the authority of Title 10, U.S. Code (USC), section 7837 and/or Title 32, USC section 710(c), 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.

6. Title 10, USC, section 7837 (Settlement of accounts: remission or cancellation of indebtedness of members) states, the Secretary of the Army may have remitted or cancelled any part of the indebtedness of a person to the United States or any instrumentality of the United States incurred while the person was serving as a member of the Army, whether as a Regular or a Reserve in active status, but only if the Secretary considers such action to be in the best interest of the United States.

//NOTHING FOLLOWS//