



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

MEH
Docket No. 3176-08
17 March 2009

[REDACTED]

Dear [REDACTED]

This is in reference to the application for correction of your naval record pursuant to the provisions of 10 USC 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 March 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of the application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by Naval Service Training Command (NSTC) memo 1533 OD4 of 4 Dec 08, and Naval Personnel Command (NPC) memo 1920 SER 834/058 of 9 Dec 08, copies of which were previously provided to you through counsel.

The Board members also considered your request for a personal appearance, however the Board found that the issues in the case were adequately documented and that a personal appearance with or without counsel would not materially add to the Board's understanding of the issues involved. Thus, the request for a personal appearance has been denied.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection the Board substantially concurred with the comments contained in the advisory opinions provided by NSTC and NPC.

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Regulations implementing the Naval Reserve Officers Training Corps (NROTC) scholarship program provide that a scholarship recipient who fails to complete the program requirements as specified in the scholarship agreement shall, at the discretion of the Secretary of the Navy, either serve on active duty for a period specified in the agreement or reimburse the United States for the educational costs it has expended on the scholarship recipient's behalf. In such cases, the Secretary of the Navy has the discretion to render a case-by-case determination as to whether the reimbursement requirement and/or the enlisted service requirement should be waived due to mitigating circumstances.

In your case, Mr. William A. Navas, Assistant Secretary of the Navy (Manpower and Reserve Affairs), acting on behalf of the Secretary of the Navy, approved your disenrollment from the program and ordered reimbursement of scholarship funds on 25 May 2006. On 8 January 2008, in reply to correspondence from you to your elected representative, Mr. Navas's successor, Ms. Anita K. Blair, Acting Assistant Secretary of the Navy (Manpower and Reserve Affairs) reviewed the matter once again. Ms. Blair also determined that a waiver was inappropriate. Accordingly, she reaffirmed Mr. Navas's earlier decision requiring the reimbursement of scholarship funds.

The Board gave due consideration to the evidence and arguments made in the application, including the claims that your mental health issues were "disclosed" prior to entering the NROTC program, that you "did not violate" your contract, that your "immediate commander" recommended a waiver, and that you gave an "honest and strong effort" to completing the NROTC program. However, after review of all the evidence, the Board found there was no error or injustice in the earlier decisions requiring reimbursement. You received substantial education at government expense before your disenrollment. You were disenrolled before completing the scholarship program and you did not serve on active duty after your disenrollment or otherwise complete the military service obligation specified in the scholarship agreement. In your scholarship agreements, you certified that you understood "that if the Secretary of the Navy's decision is recouped, instead of active enlisted service" you would be "ordered to pay back all tuition costs beginning with the freshmen year and thereafter." Although there is evidence that your failure to complete the program and service obligation is attributable to a medical condition, you have nonetheless

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benefitted and been enriched from the education you received at government expense while the government has not received the benefit of your active service after your disenrollment. The Board finds that, in light of the educational benefit you received, the regulations implementing the NROTC program and the terms of the scholarship agreement, it is not an error or an injustice for the Secretary of the Navy to require reimbursement of the costs expended by the United States for your education. The Board also finds that a waiver of the reimbursement of those costs is not warranted under the circumstances. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is also important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,


W. DEAN PFEIFFER
Executive Director