



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

[REDACTED]
MEH

Docket No. 7773-10
30 Aug 2011

[REDACTED]
[REDACTED]
[REDACTED]

This is in reference to your application for correction of 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 8 August 2011. 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 your 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 opinion furnished by NSTC memo 1533 OD/0707 of 13 Jun 2011, a copy of which is attached. The Board also considered your reply to the advisory opinion, submitted through counsel on 14 July 2011.

The Board members also considered your request for a personal appearance, however they 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, your 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 opinion provided by the Naval Service Training Command (NSTC).

Review of the records in this case reveal that in January 2005, you received an academic warning because your Fall 2004 grade

point average fell to 2.33. On or about 13 March 2006, you appeared before a Performance Review Board (PRB) convened to inquire into your aptitude and performance. The PRB cited a history of professional and performance shortcomings including unprofessional behavior towards peers, failure to follow the chain of command and lack of respect for unit leadership. Review of the PRB proceedings reveals that you showed declining physical fitness scores, you embraced a policy of "doing the minimum" to just "get by," and you displayed an immature pattern of questioning behavior that went beyond common sense. The PRB recommended that you be disenrolled from the program. However, on 16 March 2006, rather than being disenrolled, you were placed on a Leave of Absence (LOA). You were advised that during the LOA, among other things, you would be expected to place renewed emphasis on your overall performance, demonstrate a more positive attitude, demonstrate willingness to carry out direction, give a lecture regarding compliance with orders and meet with your leadership weekly for counseling and aptitude remediation.

Approximately two weeks later, on 29 March 2006, during a counseling session with [REDACTED], US Navy, you indicated a "desire to drop" (disenroll) from the NROTC program. On 31 March 2006, you submitted the following statement "For both pending medical reasons and reasons of personal conscious I respectfully request to drop on request from the program. If given the option, I would choose (to) repay tuition to resolve my indebtedness to the US Government for participation in the NROTC program."

As a result of your statements, another PRB was convened. You were advised of your right to appear before the PRB, but waived your right to appear. The PRB recommended that your request for voluntary disenrollment be approved. The endorsement to the PRB indicates that you had requested to fulfill your obligation by repayment of funds paid by the government for your participation in the NROTC program.

As a result of your request, you were ultimately disenrolled from the NROTC program and a debt of \$88,466.14 was established.

Your application avers that the debt should now be extinguished for the following reasons. You aver that your disenrollment request was not voluntary because you were suffering from a medical condition that impaired your judgment. You aver that your disenrollment request was not voluntary because [REDACTED] failed to advise you to wait until a more thorough

assessment of your medical condition was conducted. Further, you aver that even if the disenrollment is considered voluntary, the debt should be excused because, in light of your impaired judgment, "fairness and justice" demand that the debt be waived. The Board carefully considered your request and your arguments. However, the Board found there was no error or injustice in your disenrollment from the NROTC Program and no error or injustice in the decision to establish the educational debt. In the Board's view, your request to disenroll was a voluntary decision made of your own free will. No one forced or coerced you into requesting disenrollment. You could have continued in the NROTC program if you had wanted to. You are the party that initiated the voluntary disenrollment.

The Board was not persuaded that the voluntary nature of your disenrollment request was somehow overcome by [REDACTED]. Aside from your unsubstantiated claim, there is no evidence that [REDACTED] "advised you to voluntarily initiate disenrollment." Aside from your unsubstantiated claim, there is no evidence that you were "miscounseled" by [REDACTED]. You have complained that [REDACTED] "should have advised you" to wait until a more thorough assessment of your medical condition was conducted. The Board found no evidence of an omission by [REDACTED] that would impact on the voluntariness of your disenrollment. In the Board's view, you were aware of your situation. The option of continuing in the program while your medical condition was assessed was available to you with or without any advice from [REDACTED].¹

Likewise, The Board was not persuaded that the voluntary nature of your disenrollment request was somehow overcome by the undue stress you experienced when you discovered your high blood pressure and other medical symptoms. You appear to have been able to make other important life decisions, such as the decision to continue your education at the University of Michigan after your disenrollment. In the Board's view, you

¹ In fact, by voluntarily disenrolling so quickly, you deprived the NROTC leadership the opportunity to properly assess whether your new found medical condition would interfere with your eventual service. It is not a foregone conclusion, as you claim, that your "symptoms and persistent high blood pressure would have medically disqualified" you from further service. That is a determination that could not be made due to your request for disenrollment.

were aware that you could continue in the NROTC program as well.² You simply made a choice not to do so.

Finally, the Board was not persuaded that in light of all the circumstances, "fairness and justice" demand that the debt be waived. The regulations implementing the 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 specified period 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.

You received substantial education at government expense before your disenrollment. Your disenrollment was voluntary. You initiated the voluntary disenrollment before completing the scholarship program. You did not serve on active duty after your disenrollment or otherwise complete the military service obligation specified in your scholarship agreement. You certified that "If given the option, I would choose (to) repay tuition to resolve my indebtedness to the US Government for participation in the NROTC program." You have 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

² Of course, such continuation would have been in a "Leave of Absence" status where your attitude and performance would be more closely monitored.

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

Enclosure