



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 7524-20
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO █
█, USN ACADEMY, █

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/enclosures
(2) Agreement to Serve and Degree Requirements for all Midshipmen of 10 Apr 11
(3) DD Form 214 effective 17 Jan 14
(4) Petitioner ltr to SECNAV (Qualified Resignation of 13 Nov 13
(5) Company Officer System: Honor Offenses of 14 Nov 13
(6) Petitioner ltr to SECNAV (Acknowledgment of Options Pertaining To My Separation
From The Naval Academy) of 25 Nov 13
(7) Office of the Commandant of Midshipmen ltr 1610 of 6 Dec 13
(8) Superintendent, USN Academy Action Memo of 6 Jan 14
(9) Office of the Secretary Memo for Superintendent, USN Academy of 17 Jan 14
(10) Superintendent USN Academy ltr 3 Feb 14
(11) MIDPERS and USN Academy JAG Memo of 5 Feb 14
(12) DFAS ltr SSN Account Number of 21 Mar 14
(13) Promissory Note for Student Deferment of 14 Apr 14
(14) DFAS ltr of 9 Dec 19
(15) Advisory Opinion by SJA USN Academy ltr of 18 Nov 20
(16) Advisory Opinion Rebuttal by Law Offices of █ PLLC ltr of 25 Feb 21

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected to remit debt to U.S. Naval Academy (USNA). Alternatively, Petitioner requests that the monthly repayment be reduced to \$500 until the original debt of \$118,702.58 is paid.

2. The Board, reviewed Petitioner's allegations of error and injustice on 9 November 2021, and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of enclosures (1) through (16), relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

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[REDACTED], USN ACADEMY, [REDACTED]

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 10 April 2011, Petitioner signed an Agreement to Serve and Degree Requirements for all Midshipmen who are Citizens or Nationals of the United States. He agreed to complete the course of instruction at the USNA and had a 5-year active duty obligation. Petitioner acknowledged that should he fail to complete the above requirements, the Secretary of the Navy (SECNAV) may order that Petitioner reimburse the government of the United States for the cost of educational benefits received at the USNA. See enclosure (2).

c. On 30 June 2011, Petitioner's service at the [REDACTED] began. See enclosure (3).

d. On 13 November 2013, Petitioner submitted his Qualified Resignation from the [REDACTED]. Petitioner acknowledged that he understood that the charges alleging violation of the Brigade Honor Concept (USNAINST 1610.3H) and the Administrative Conduct System (COMDTMIDNISNT 1610.2E) have been levied and are pending against him. He admitted the substantial truth of the alleged misconduct. He understood that through this resignation, he may be discharged from the Naval Service with a General (Under Honorable Conditions) Discharge. He understood that a General (Under Honorable Conditions) Discharge is a less favorable discharge than an Honorable Discharge, and has consulted with counsel regarding the nature of a General (Under Honorable Conditions) Discharge and the potential effects it may have on his future. Petitioner stated that his rights were explained to him and that he understood those rights. Furthermore, Petitioner acknowledged that he is in debt to the government. See enclosure (4).

e. On 14 November 2013, Company Officer System: Honor Offenses listed Petitioner was charged with lying. On or about 7 November 2013, Petitioner allegedly lied about drinking underage. See enclosure (5).

f. On 25 November 2013, Petitioner notified SECNAV that he has been advised of and acknowledged the following pertaining to his pending separation from the USNA. He has incurred a two-year enlisted active duty service obligation. If the SECNAV determines that Petitioner should be separated from the USNA, he may be ordered to active duty enlisted service or if unsuitable for further naval service, he may be required to reimburse the government for the cost of his education at the USNA in the amount of \$114,564.41. Petitioner elected to provide monetary recoupment in lieu of active duty service. See enclosure (6).

g. On 6 December 2013, Commandant of Midshipmen, USNA issued Petitioner a Disposition Addendum of Conduct Case. Per the disposition of conduct case letter of 10 October 2013 Petitioner was assigned conduct probation and required to successfully complete the probation period without violating the terms of his probation. Term d. of this conduct probation letter was a direct order requiring Petitioner to not consume alcohol until 8 September 2014. On 21 November 2013, the Deputy Commandant of Midshipmen found Petitioner guilty of underage drinking and in violation of his conduct probation letter. Petitioner submitted a qualified resignation with a request to be allowed to finish out the current semester prior to his separation from the USNA. Contingent on his approval of Petitioner remaining a Midshipmen through the end of Fall Semester Academic Year 2014, the Commandant issued this addendum to

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Disposition of Conduct Case letter of 10 October 2013. The previous terms of his conduct probation remain the same as directed. Any further violations of any terms of Petitioner's conduct probation, to include the terms added to his conduct probation via this addendum, between now and the end of Fall Semester Academic Year 2014 will immediately result in his separation from the USNA. See enclosure (7).

h. On 6 January 2014, Superintendent, USNA requested that the Assistant Secretary of the Navy (ASN (M&RA)) sign TAB B accepting Petitioner's qualified resignation. Prior to submitting his resignation, Petitioner consumed alcohol underage and then lied when confronted about the incident. Additionally, recommending that Petitioner be discharged from the [REDACTED] with an Honorable Discharge characterization, separation code BNC (Unacceptable Conduct), and fulfill his obligation arising from the educational benefits received from attending the [REDACTED] through monetary recoupment in the amount of \$118,702.58. See enclosure (8).

i. On 17 January 2014, ASN (M&RA) notified Superintendent, USNA that Pursuant to 10 U.S.C. §6962 and Title 10 U.S.C. § 6959, he ordered Petitioner to be discharged from the [REDACTED] with an Honorable Discharge characterization. Based on the recommendation of the [REDACTED] Superintendent, Petitioner was ordered to fulfill his obligation arising from the educational benefits received from attending the [REDACTED] through monetary recoupment in the amount of \$118,702.58. See enclosure (9).

j. On 17 January 2014, Petitioner was honorably discharged from the [REDACTED] due to unacceptable conduct. See enclosure (3).

k. On 3 February 2014, [REDACTED] Superintendent notified Petitioner of his discharge from the [REDACTED] and Naval Service, and in order to complete his service academy obligation, Petitioner will need to repay \$118,702.58, the cost of his education while attending the [REDACTED]. See enclosure (10).

l. On 5 February 2014, Midshipmen Personnel Officer (MIDPERS) and Legal Advisor to the Commandant (USNA JAG) issued a memorandum for the record explaining the discrepancy in the recoupment amounts. In the memorandum signed by the ASN (M&RA), the money recoupment in the amount of \$118,702.58 was different than the amount that had been calculated previously on the cost worksheet/blue brief. The cost worksheet had been figured out through the month of October 2013 at \$114,564.41 total. Petitioner was permitted to stay at the [REDACTED] until December 2013 to finish finals and receive credits prior to separation. Upon reviewing the money recoupment letter signed/approved on 17 January 2014 by ASN (M&RA), it was noticed by MIDPERS that the figures had been updated to include \$4,138.17 additional monies for the month of November school attendance. See enclosure (11).

m. On 21 March 2014, Defense Finance and Accounting Service (DFAS) notified Petitioner of his debt of \$118,702.58 to the government, which stated that Petitioner can avoid interest, administrative charges, and penalties, as authorized under the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996, by making full payment of this debt within 30 days of this notice. If Petitioner is financially unable to make full payment, he may make

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monthly installment payments. The minimum acceptable installment amount is \$3,348.37; DFAS must receive it within 30 days or interest will be charged on the unpaid balance. See enclosure (12).

n. On 14 April 2014, Petitioner signed a Promissory Note for Student Deferment on Education Debts Only. Petitioner requested a student deferment (no payment) for the repayment of an educational debt/student loan until date of graduation plus 90 days. Payment shall be made in equal monthly installments per month until the entire debt, including interest, late payment penalties, and administrative charges are paid in full. Furthermore, a letter from the registrar's office is required annually to determine if debtor is eligible for continuous student deferment. See enclosure (13).

o. On 9 December 2019, DFAS issued a statement to Petitioner for payment due date of 9 January 2020. Furthermore, it listed a previous balance of \$119,105.78, Payments received \$0.00, Interest charged of \$807.65, Penalty Admin Fee of \$37,883.21, and Total balance due of \$157,796.64. See enclosure (14).

p. On 18 November 2020, BCNR received an unfavorable advisory opinion from Staff Judge Advocate [REDACTED] which recommended that Petitioner's request to have his debt remitted be denied; however, his request to have his monthly payment amount lowered was supported. There was no error or injustice in the processing of Petitioner's case that would warrant the board to overturn ASN (M&RA)'s decision to discharge him from [REDACTED] pursuant to his resignation request and order him to repay the government for educational benefits he received. Petitioner received two and a half years of educational benefits, thus it is not in the interest of justice to overturn the recoupment. See enclosure (15).

q. On 25 February 2021, Petitioner's counsel submitted a rebuttal to the advisory opinion. The counsel argues that while a midshipman may be punished for the offense based on information or evidence obtained independently of their self-report, there is no indication here that such information was obtained, nor that punishment was handed down based on such outside information. The sole basis for the punishment appears to be Petitioner's self-report. As such, in treating him with the same dignity as a self-report made by someone who did something rash enough to be arrested, Petitioner should not have been put on probation for this self-reported ingestion of alcohol. Petitioner was unjustly placed on probation. Petitioner was then separated as a result of drinking alcohol while on that probation. A probation that was erroneously issued in the first place. See enclosure (16) for counsel's arguments.

BOARD CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (1) through (16), the Board noted Petitioner was placed on probation as a result of an incident involving underage alcohol use and ordered to not drink alcohol. Petitioner's counsel asserts that placing Petitioner on probation was erroneous because he self-reported the incident. The Board also noted even if Petitioner had not been placed on probation for that first incident, he likely would have been ordered to not drink alcohol as part of potential alcohol treatment. Petitioner disobeyed an order and was charged a second time for underage

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drinking and lying about it. The Board further noted because Petitioner chose to drink alcohol, disobey a direct order, and resign from the USNA, his discharge is appropriate. Finally, the Board concluded that as a result of the foregoing, and the fact that Petitioner opted for monetary recoupment in lieu of active duty service, his debt to the government for the educational benefits he received is valid. Finally, the restructuring of Petitioner's debt repayment would need to be addressed with DFAS to reduce monthly repayment.

BOARD RECOMMENDATION

That Petitioner's request be denied.

- 4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.
- 5. The foregoing action of the Board is submitted for your review and action.

12/7/2021

[REDACTED]

Executive Director

From: Principal Deputy Assistant Secretary of the Navy (Manpower and Reserve Affairs)
Performing the Duties of the Assistant Secretary of the Navy (Manpower and Reserve Affairs)

Reviewed and Approved Petitioner's Request (Grant Relief)

Reviewed and Approved Board Recommendation (Deny Relief)

[REDACTED]

[REDACTED] 12/17/2021

Principal Deputy Assistant Secretary
of the Navy (Manpower and Reserve Affairs)
Performing the Duties of the Assistant Secretary
of the Navy (Manpower and Reserve Affairs)