



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

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Docket No: 3809-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █ USN, XXX-XX-  
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Ref: (a) 10 U.S.C. § 1552  
(b) 10 U.S.C. § 8459  
(c) Presidential Memorandum, "Policy for Military Service Academy and Reserve Officers' Training Corps Graduates Seeking to Participate in Professional Sports," 26 June 2019  
(d) SECDEF Memo, subj: Directive-type Memorandum (DTM)-19-011 Military Service Academy Graduates Seeking to Participate in Professional Sports, 8 November 2019 (Incorporating Change 1, 19 October 2020)

Encl: (1) DD Form 149 with attachments  
(2) USNA BBA 1531/178, Agreement to Serve and Degree Requirements for all Midshipman who are Citizens or Nationals of the United States, 17 May 2017  
(3) Petitioner Biography  
(4) Supplement to Agreement to Serve for All Midshipmen who are Citizens or Nationals of the United States, 13 Jan 20  
(5) NFL Player Contract  
(6) Statement of Understanding, 3 May 21  
(7) USNA Action Memo, subj: Nomination of [Petitioner] to Participate in Professional Sports, 4 May 21  
(8) NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office, 28 May 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 by revoking his acceptance of his appointment as Ensign in the U.S. Navy, thus restoring him to the grade of Midshipman, and that the Board recommend to the Secretary of the Navy (SECNAV) that his request to participate in professional sports be forwarded to the Secretary of Defense (SECDEF) pursuant to reference (d).

2. The Board reviewed Petitioner's allegations of error or injustice on 1 July 2021 and, pursuant to its regulations, the Majority determined that the corrective action indicated below should be taken. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of

error or injustice, finds as follows:

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 17 May 2017, Petitioner signed his initial service agreement, and subsequently enrolled in the U.S. Naval Academy (USNA) as a Midshipman. See enclosure (2). By all accounts, Petitioner enjoyed a stellar career while attending the USNA, earning multiple athletic, academic, and community service-related awards. He participated as a cornerback on the USNA football team and served as a team captain during his last two years. He also served as the Class President during his First Class year at the USNA. See enclosure (3).

c. On 12 December 2017, Congress amended reference (b) in the Fiscal Year 2018 National Defense Authorization Act to require Midshipmen to sign an agreement that they “will not seek release from [their] commissioned service obligation to obtain employment as a professional athlete following graduation until [they] complete a period of at least two consecutive years of commissioned service,” and that they understand that they may not accept an appointment in the Navy Reserve or Marine Corps Reserve to obtain such employment until at least the end of that two-year period.<sup>1</sup>

d. On 26 June 2019, the President signed reference (c), permitting service academy graduates to pursue employment as professional athletes upon approval by the SECDEF. To comply with reference (b), the policy provided that exceptionally talented athletes who are service academy graduates, but who have not been appointed as a commissioned officer, may pursue this opportunity as an enlisted member in the Individual Ready Reserve (IRR) until such time as the SECDEF tenders their appointment as a commissioned officer.

e. On 8 November 2019, SECDEF promulgated reference (d) to implement reference (c), establishing the procedures by which exceptionally talented athletes may request that the SECDEF approve a delay in their commissioning through their respective service secretaries in order to pursue employment as a professional athlete before being tendered a commission.

f. On 13 January 2020, Petitioner signed an amended service agreement pursuant to the provisions of reference (b), agreeing that he would not seek release from his commissioned service obligation or seek or accept approval for off-duty employment while completing his commissioned service obligation to obtain employment as a professional athlete until he completed at least two consecutive years of commissioned service after graduation, and that he understood that he may not pursue a Reserve appointment to obtain such employment until he completed at least two years of commissioned service. See enclosure (4). Prior to signing this agreement, as required by reference (b), Petitioner’s service agreement did not prevent him from seeking a Reserve commission to pursue employment as a professional athlete or from

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<sup>1</sup> 10 U.S.C. § 6959 was renumbered as reference (b) on 13 August 2018. On 20 December 2019, Congress again amended reference (b) to require Midshipmen to further agree not to seek or accept approval for off-duty employment while completing their commissioned service obligation for the purpose of obtaining employment as a professional athlete.

requesting approval to pursue such employment during his off-duty time upon commissioning.

g. In 2021, Petitioner was invited to and authorized by the USNA to attend a Rookie Minicamp by the [REDACTED] franchise of the National Football League (NFL). On 2 May 2021, the [REDACTED] offered Petitioner an employment contract as an undrafted free agent. See enclosure (5).

f. On 3 May 2021, Petitioner requested that his appointment as an Ensign be delayed following his graduation from USNA so that he could pursue his opportunity for employment as a professional athlete. Except for a provision stating that such requests *should* be submitted at least 120 days before his graduation date, his request met all of the requirements of reference (d). Pursuant to reference (d), he agreed that he would enlist in the IRR for this purpose and that he would accept an appointment as a commissioned officer in the Navy upon tendering. See enclosure (6).

g. On 4 May 2021, the Superintendent, USNA, endorsed Petitioner's request with his "strongest possible support." See enclosure (7).

h. On 28 May 2021, Petitioner graduated from the USNA. Pursuant to his service agreement, and with no action having been taken by SECDEF on his request to delay his commission to pursue employment as a professional athlete, Petitioner accepted his tendered appointment as an Ensign in the Navy. See enclosure (8). According to the terms of his supplemental service agreement (enclosure (4), he may not seek release from his commissioned service obligation or approval for off-duty employment until he completes at least two consecutive years of commissioned service from this date.

i. Subsequent to his appointment as an Ensign, Petitioner became aware that there were at least five other similarly situated service academy graduates from the United States Military Academy and/or the United States Air Force Academy who submitted similar requests to delay their commissions so that they could pursue employment as professional athletes. In each case, the Army and/or Air Force had delayed tendering their commissions pending action on these requests by the SECDEF pursuant to reference (d).

j. Petitioner requests that the Board take action to revoke his appointment as an Ensign, essentially reverting him back to Midshipman status, so that his request to delay his appointment to pursue employment as a professional athlete may receive the same consideration that has or will be afforded to the other similarly situated athletes as a matter of equity. In making this request, he noted that there was no prohibition to his pursuit of employment as a professional athlete, either through appointment as a Reserve officer or during his off-duty time, when he entered the USNA, and that he was required to signed enclosure (4) agreeing to this prohibition after he had already become obligated to serve as a commissioned officer. He specifically noted that he is not seeking to be excused from his commissioned service obligation and that he will accept an appointment when tendered by SECDEF if this request is approved.

**MAJORITY CONCLUSION:**

Upon careful review and consideration of all of the evidence of record, the Majority of the Board found an injustice that warrants relief.

The Majority found no error in the Navy's decision to tender Petitioner's commission as an Ensign, or in Petitioner's acceptance of that commission. In fact, the Petitioner was obligated to accept the commission when tendered according to his service agreement. However, the Board did find that the circumstances of this case represent an injustice. Specifically, the Board found it to be inequitable that Petitioner did not receive the same consideration that other similarly situated service academy graduates in other services either have or will receive upon their requests in accordance with reference (d). While other services delayed tendering appointments to their similarly situated service academy graduates in order to enable to SECDEF to act upon their requests, no such consideration was granted to the Petitioner. The Majority presumes that this oversight may be attributable to the relatively new and rarely applicable circumstances of reference (d). The Majority found that Petitioner exercised due diligence in submitting his request in accordance with reference (d) only one day after he was offered an NFL contract, and that this request was not acted upon prior to his graduation through no fault of his own. The Majority also found that the evidence reflects that Petitioner is not seeking a release from his commissioned service obligation to pursue appointment as a professional athlete, as he accepted his tendered appointment despite having been offered an NFL contract. Rather, he is merely seeking to delay his commissioned service so that he can pursue this opportunity consistent with his service agreement.

Although the Majority did find an injustice in the circumstances of Petitioner's situation that warrants relief, it was not inclined to grant Petitioner's request that it recommend to the SECNAV that his request pursuant to reference (d) be forwarded to the SECDEF for action. In accordance with reference (a), the Board's authority is to correct "any military record" necessary to correct an error or remove an injustice. The Majority is exercising this authority by acting to revoke Petitioner's acceptance of his commission and temporarily reverting him to Midshipman status, but felt that the requested recommendation was outside of its statutory authority. Accordingly, the Majority declined to make such a recommendation, and leaves the decision regarding whether to forward Petitioner's request to SECDEF subsequent to his reversion to Midshipman status to SECNAV himself.

**MAJORITY RECOMMENDATION:**

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record in the interests of justice:

That Petitioner's acceptance of his appointment as an Ensign in the U.S. Navy be removed from his record, thus restoring his status as a Midshipman pending final action on his request in accordance with reference (d) and essentially annulling his commission.

That the Acting SECNAV determine whether the delay of Petitioner's commission so that he may pursue employment as a professional athlete is in the best interests of the Navy, and if so

that he forward Petitioner's request to delay his commission to SECDEF for final action. If the Acting SECNAV determines that a delay of Petitioner's commission is not in the best interests of the Navy, he should disapprove this recommendation so that Petitioner's commission is not revoked.

That no further changes be made to Petitioner's naval record.

**MINORITY CONCLUSION:**

Upon careful review and consideration of all of the evidence of record, the Minority of the Board found insufficient evidence of any error or injustice that warrants relief. Specifically, the Minority concluded that Petitioner failed to submit enclosure (6) within the timeframe dictated by reference (d), and therefore disagreed with the Majority conclusion that Petitioner exercised due diligence in submitting his request. As a talented athlete, Petitioner could have made his request to delay his commission prior to being offered a contract by the [REDACTED] and his request would have been acted upon prior to his graduation date if he complied with the timeliness requirement of reference (d). Accordingly, the Minority found no injustice in the circumstances that now prevent Petitioner from pursuing employment as a professional athlete for at least two years.

The Minority concurred with the Majority regarding Petitioner's request for a recommendation to the SECNAV regarding the handling of his request.

**MINORITY RECOMMENDATION:**

In view of the above, the Minority of the Board recommends that no corrective action be taken on Petitioner's naval record.

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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

7/1/2021

[REDACTED]  
Executive Director

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED], USN, XXX-XX-  
[REDACTED]

ACTING SECRETARY OF THE NAVY DECISION:

MAJORITY Recommendation Approved (Revoke Petitioner's Appointment as an Ensign;  
Restore him to Midshipman Status)

~~MINORITY Recommendation Approved (Deny Relief)~~

July 6, 2021

[REDACTED]

Acting Secretary of the Navy