



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

█
Docket No. 5183-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER █
USNR, XXX-XX █

Ref: (a) Title 10 U.S.C. § 1552
(b) NROTCSUNYINST 1533.1J of 28 Aug 08

Encl: (1) DD Form 149 w/enclosures
(2) Director, Office of Disability Services, █ University of 24 Aug 09
(3) DD Form 4 of 31 Aug 09
(4) NSTC 1533/135 of 10 Sep 09
(5) Assistant Professor of Naval Science of 5 May 10
(6) Drug Testing Program of 11 Apr 12
(7) Drug Test Results of 25 Apr 12
(8) █ Health Works of 7 May 12
(9) CO, NROTC Unit of 10 May 12
(10) BUMED of 22 May 12
(11) █ Health Works of 15 Jun 12
(12) BUMED of 3 Jul 12
(13) CO, NROTC of 23 Jul 12
(14) CO, NROTC of 25 Jul 12
(15) Performance Review Board of 14 Aug 12
(16) First Endorsement, Performance Review Board of 15 Aug 12
(17) Commander, NSTC of 18 Apr 13
(18) NSTC 1533/123 of 11 Jun 13
(19) NSTC 1533/124 of 11 Jun 13
(20) Commander, NSTC of 21 Feb 14
(21) Commander, NSTC of 18 Oct 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 remove recoupment obligation following his disenrollment from Naval Reserve Officers Training Corps (NROTC).

2. The Board, reviewed Petitioner's allegations of error and injustice on 23 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 (21), relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.

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3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and 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. In accordance with reference (b), all personnel assigned to or administered by an NROTC unit, are subject to urinalysis testing. All midshipmen will be tested at least twice per academic year, including once between 1 August and 31 December and once between 1 January and 1 June.

c. On 24 August 2009, Director, Office of Disability Services, [REDACTED] University noted that Petitioner registered with Disability Services in the Fall of 2009 with a learning disability and diagnosis of dyslexia. The evaluation submitted supported the need for several academic accommodations in all his courses. See enclosure (2).

d. On 31 August 2009, Petitioner enlisted in the United States Naval Reserve for 8 years. See enclosure (3).

e. On 10 September 2009, Petitioner signed a Naval Reserve Officers Training Corps, Four-Year Scholarship Service Contract. Petitioner was assigned to the NROTC Unit [REDACTED] College. Under initial eligibility for scholarship benefits, Petitioner understood and agreed that he must meet certain criteria to qualify for the scholarship benefits. He had no condition that would disqualify him from military service as an officer or as an enlisted member. He had disclosed all information that may reasonably affect his eligibility for military service. Furthermore, Petitioner understood that he would be required to reimburse the Navy for the cost of the tuition and fees he had incurred plus interest if he is dis-enrolled from the NROTC Program for any reason (including medical or physical disqualification). See enclosure (4).

f. On 5 May 2010, Assistant Professor of Naval Science approved Petitioner's request for extension of time on exams. See enclosure (5).

g. On 11 April 2012, Petitioner was part of a urinalysis given by NROTC Unit. Furthermore, Petitioner listed Vyvanse under comments and disposition. See enclosure (6).

h. On 25 April 2012, Petitioner had a positive result on the urinalysis. See enclosure (7).

i. On 7 May 2012, Petitioner's physician signed a letter stating Petitioner has been under his care since 30 June 2009 for symptoms of exhaustion and ADD (Attention Deficit Disorder), and was prescribed Vyvanse on 26 July 2010 and 8 January 2011. Further stating that Petitioner has blood work completed every 6 months to ensure the correct chemical balance. See enclosure (8).

j. On 10 May 2012, Commanding Officer (CO), NROTC Unit notified Director, Navy Alcohol and Drug Abuse Prevention Branch that based on review of Petitioner's medical history, it is determined that the positive urinalysis is not a drug abuse incident. See enclosure (9).

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k. On 22 May 2012, Chief, Bureau of Medicine and Surgery (BUMED) notified Naval Service Training Command (NSTC) that based on a review of the available medical information, the subject applicant DOES NOT meet established physical standards due to attention deficit disorder and academic skills disorder. A waiver of the physical standards IS NOT recommended for continuation in the NROTC program. See enclosure (10).

l. On 15 June 2012, Petitioner's physician signed a letter stating Petitioner was being treated for symptoms of ADD, but no formal diagnosis of ADD has ever been made. Further stating that Petitioner was not dependent on Vyvanse and can take it as he sees fit, and that Petitioner is a high functioning person and will continue to be high functioning should he need to stop taking Vyvanse. The physician also noted that there is no medical reason for Petitioner to continue taking Vyvanse, there is also no medical evidence saying he cannot stop taking it. See enclosure (11).

m. On 3 July 2012, Chief, BUMED notified NSTC that based on a review of the available medical information, the subject applicant DOES NOT meet established physical standards due to use of academic accommodations for learning disorders and medical treatment for symptoms of attention deficit disorder, both after the 14th birthday. A waiver of the physical standards IS NOT recommended. See enclosure (12).

n. On 23 July 2012, CO, NROTC Unit notified Petitioner that a Performance Review Board (PRB) will be convened on 24 July 2012 to investigate and make recommendations on Petitioner's physical disqualification as documented by the Chief, BUMED. Petitioner was informed of his rights in regard to these proceedings. Furthermore, the PRB may recommend that any of the following actions be taken: No action, Warning, Probation, Leave of Absence, or Disenrollment, with an interim leave of absence pending final disenrollment approval. See enclosure (13).

o. On 25 July 2012, CO, NROTC Unit notified Petitioner that a PRB will be convened on 14 Aug 12 vice 24 July 2012. See enclosure (14).

p. On 14 August 2012, PRB notified the CO that there were no outstanding problems with his academic performance, however, he did utilize academic accommodations unbeknownst to the NROTC staff during his tenure at Fordham University. Further noting that there were no disciplinary problems and that Petitioner's performance had been exemplary. The PRB agreed with BUMED's determination that Petitioner was no longer physically qualified for commissioning and recommend that he be disenrolled from the NROTC program. See enclosure (15).

q. On 15 August 2012, CO notified Petitioner that he concurred with the findings of the PRB, and that a recommendation for disenrollment will be forwarded, and that Petitioner was subject to financial recoupment. See enclosure (16).

r. On 18 April 2013, Commander, NSTC forwarded the recommendation for termination of appointment as midshipman to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)), which stated that BUMED determined that academic accommodations

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for Petitioner's learning disorders and treatment for symptoms of ADD, both after age 14 were disqualifying. The Commander noted that the medical and school documents, from high school and Fordham University show that Petitioner had a history of accommodations and treatment. However, despite knowing the requirement to disclose this information in his medical history, Petitioner did not. Therefore, recoupment of scholarship funds in the amount of \$125,121.50 is recommended in lieu of active enlisted service. The ASN (M&RA) concurred with above mentioned recommendation and approved said action on 23 May 2013. See enclosure (17).

s. On 11 June 2013, Commander, NSTC notified the CO, NROTC Unit and Petitioner of his disenrollment for medical reasons effective 23 May 2013. Further stating that the ASN (M&RA) on behalf of the Secretary of the Navy has approved Petitioner's discharge from the naval service and requires Petitioner to reimburse the government for the amount of advanced educational assistance received. See enclosures (18) and (19).

t. On 21 February 2014, Commander, NSTC notified the Director, Defense Finance and Accounting Service (DFAS) of the authorization to initiate recoupment of Petitioner's educational expenses in the amount of \$125,121.50 with a disenrollment effective date of 23 May 2013. See enclosure (20).

u. The office having cognizance over the subject matter addressed Petitioner's request and has commented to the effect that the request has merit and warrants favorable action. See enclosure (21).

BOARD CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of enclosure (21), the Board concluded that Petitioner's request warrants full relief. The Board concluded the NROTC Unit was informed of Petitioner's learning disability in 2009 and should have taken appropriate steps to confer with BUMED upon notification. The Board concluded that Petitioner incurred his educational debt because the NROTC Unit allowed him to participate in the college program which he was not medically eligible to participate in and therefore, his debt is unjust.

BOARD RECOMMENDATION

That Petitioner's recoupment of scholarship funds in the amount of \$125,121.50 is cancelled effective 23 May 2013.

Note: DFAS will complete an audit of Petitioner's records to determine if Petitioner is due reimbursement for any payments previously made.

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.

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

1/7//2022

[REDACTED]

Executive Director

From: Acting Assistant Secretary of the Navy (Manpower and Reserve Affairs)

FEB 04 2022

Reviewed and Approved Board Recommendation (Grant Relief) [REDACTED]

Reviewed and Approved (Deny Relief)

[REDACTED]

Acting Assistant Secretary of the Navy
(Manpower and Reserve Affairs)