



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. 5492-21
Ref: Signature Date

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Dear ■■■■■■:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 11 January 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the advisory opinion (AO) by Naval Service Training Command (NSTC) of 4 November 2021 and your attorney's response to the AO received on 28 December 2021.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, finds as follows:

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

On 27 April 2017, Commanding Officer (CO), Naval Reserve Officers Training Corps Unit (NROTCU), ■■■■■■ University notified you that per NSTC M-1533.2A, you were being placed on aptitude probation until the Fall 2017 inventory physical readiness test (PRT), at which time you would be reevaluated, due to failure to meet the Navy physical fitness assessment (PFA) standards, and failure to correct said deficiency may result in leave of absence (LOA) or disenrollment. Your CO further stated at the inventory PRT in the Fall 2017 semester, he would reevaluate your progress.

On 9 May 2017, CO, NROTCU notified the Commander, NSTC (OD3) that you failed to meet PRT standards during the Spring 2017 semester, and highly recommended postponing your cruise.

On 2 October 2017, CO, NROTCU notified you that you were on physical readiness LOA for the Fall 2017 semester because your failure to pass the Spring 2017 official PFA with a "Good" or better after [t]wo attempts and failing to meet the required terms of your aptitude probation.

Under the provisions of the Physical Readiness LOA, you were directed to 1) Attend four (4) Physical Training (PT) sessions per week to include Tuesday Battalion PT, Friday Fitness Enhancement Program (FEP) PT, one university organized fitness class, and one self-guided PT session. 2) Log and track fitness dates, times, and nutrition consumption and meet weekly with your mentor to review your progress. 3) Your status as a member of FEP will be re-evaluated following the Fall 2017 official PFA and your status on LOA will be re-evaluated following the end of the Fall 2017 semester. 4) You must pass the Spring 2018 inventory PFA with a "Good" or better and must pass the official PFA with a "Good" or better prior to commissioning. 5) Failing to meet the above standards twice in a three-year period shall result in the unit submitting a disenrollment package and recommendation on your behalf.

On 17 January 2018, CO, NROTCU notified you that in accordance with NSTC M-1533.2 (Series), you successfully passed the Spring 2018 inventory PFA with a "Good" or better and met the terms of your physical readiness LOA. As such, you were qualified for continuation in the Naval Reserve Officers Training Corps (NROTC) program, and you were removed from physical readiness LOA. However, you were reminded that in order to commission you must meet all qualification standards required of a Midshipman.

On 9 October 2018, you were issued █ traffic crash report. The report stated that you were traveling south on Interstate 95 when you were stopped in traffic due to a jack knifed truck. The other driver failed to see traffic stopped and attempted to stop but hit your vehicle.

On 14 December 2018, CO, NROTCU notified you that in accordance with NSTC M-1533.2 (Series) and CO, NROTCU letter (1533 Ser N32/456 dated 11 December 2018), you were being placed on physical readiness LOA for the Spring 2018 semester because of your failure to pass the Fall 2018 official PFA with a score of "Good Low" or better after two attempts and failing to pass an official PFA twice within a two-year period.

Under the provisions of the Physical Readiness LOA, you were directed to 1) Attend four (4) PT sessions per week to include Tuesday Battalion PT, Friday FEP PT, one university organized fitness class, and one self-guided PT session. 2) Log and track, fitness dates, times, and nutrition consumption, meet weekly with the Battalion APTOPS to review your progress, and submit both food and fitness logs. 3) Your status as a member of FEP would be re-evaluated following the Spring 2019 official PFA and your status on LOA would then be re-evaluated following the end of the Spring 2019 semester. 4) You shall pass the Spring 2019 inventory and official PFA with a score of "Good Low" or better. 5) That any further failures of an official PFA would result in a disenrollment recommendation.

On 13 May 2019, Chief, Bureau of Medicine and Surgery (BUMED) recommended to the Director, Officer Development (OD4), NSTC that based on a review of the available medical information you be placed on medical leave of absence (MLOA) due to chronic back pain with ongoing limitations on military training participation, and on 29 May 2019, Deputy Commander for NROTC Operations notified NROTCU that you should be placed on MLOA.

On 5 December 2019, BUMED notified Director, Officer Development (OD4), NSTC that based on a review of the available medical information, recommend you be removed from MLOA due to history of chronic back pain in the preceding 2 years (resolved) and history of refractive surgery with enhancement

procedure. A waiver of the physical standards was [r]ecommended for continuation in the NROTC scholarship program leading to a commission in the Navy. This recommendation superseded the recommendation made in BUMED letter (6110 Ser M34 19-07706-01) of 13 May 2019.

On 9 December 2019, Deputy Commander for NROTC Operations notified NROTCU of your removal from MLOA, and waiver granted. On 12 December 2019, CO, NROTCU notified you that in accordance with NSTC M-1533.2 (Series), CO, NROTCU ERAU letter (1533 SerN32/209) of 5 June 2019, and Chief, BUMED letter (6110 Ser M34 19-47420-01) dated 5 December 2019), you were removed from your MLOA.

On 15 June 2020, CO, NROTCU notified you that pursuant to NSTC M-15332D Regulations for Officer Development and NSTC memo 1533 NOO of 29 May 20, a Performance Review Board (PRB) shall be convened to investigate and make recommendations on your failure of two official PRTs within a three-year period. Further stating that the PRB may recommend that any of the following actions be taken: no action, issuance of a 30-day compliance letter to investigate medical concerns, warning, probation, and leave of absence. Additionally, disenrollment from NROTC program and a recommendation of directed active enlisted service, recoupment/non-recoupment of scholarship funds may apply.

On 24 June 2020, you notified the CO, NROTCU that you acknowledged receipt of the PRB order and stated that you will not appear before the PRB, do not challenge a member of the PRB for cause, will not submit a written statement, will not present witness or documents to this PRB, do not request to review with your advisor, your personnel record, do not waive your right to the five full business day waiting period to convene this PRB, will not retain legal counsel for the PRB, and will not have observers at the PRB.

On 9 July 2020, PRB submitted a Summary of Proceedings. You choose to [n]ot appear before the board and submitted [n]o documents or statements on your behalf, as indicated on your acknowledgement of the PRB Convening Order, signed by you on 24 June 2020. Furthermore, the recorder presented the case to the voting members of the board, including enclosures 1 through 13 of the PRB report. The recorder also confirmed that you chose to [n]ot appear before the board or submit a written statement. The board voted 3 to 0 that you exhibited *unsatisfactory physical readiness* and disenrollment.

On 16 July 2020, PRB notified CO, NROTCU that a vote of 3 to 0 that you exhibited *unsatisfactory physical readiness*, and vote 3 to 0 for disenrollment. Subsequently, PRB notified you that the board was held on 9 July 2020 and the PRB report was enclosed. The PRB stated that you may provide a written response, however, you declined to submit a written response as noted by your signature on 27 July 2020.

On 19 November 2020, Commander, NSTC notified the Secretary of the Navy's representative in these matters (Deputy Assistant Secretary of the Navy (MMP)) that you were being recommended for disenrollment from the NROTC program for physical readiness reasons. Specifically, your consistent failures to maintain the minimum requirements to pass your PFAs within a three-year reporting period.

On 26 January 2021, Deputy Assistant Secretary of the Navy (MMP) approved your termination as a Midshipman, United States Navy Reserve, and recoupment of scholarship funds in the amount of \$71,704.00. However, stating that should you enlist or commission in active duty service at a later date, you may contact this command on procedures to have your debt deferred/terminated at that time. As such, on 2 February 2021 Commander, NSTC notified the CO, NROTCU of your disenrollment from the NROTC program and recoupment of scholarship funds.

On 11 February 2021, Commander, NSTC notified CO, NROTCU that the CO shall dis-enroll you for physical fitness effective 26 January 2021. Furthermore, the Deputy Assistant Secretary of the Navy

(MMP) has approved your discharge from the naval service and required you to reimburse the government for the amount of advanced educational assistance received. As such, on 11 February 2021 Commander, NSTC notified you of this decision and notified you that you will not be continuing scholastic instruction at the institution at other than government expense on 19 February 2021.

On 25 March 2021, Doctor █ (Sports Medicine & Orthopaedic Center) stated that the you have been treated in their office due to your low back pain that has been ongoing on/off ever since your motor vehicle accident 2.5 years ago. Further stating that you were previously and currently unable to complete high intensive exercising because it exacerbated your low back symptoms.

The office having cognizance over the subject matter provide an AO (NSTC of 4 November 2021) and commented after careful review of your application and records, there is insufficient evidence to support your assertion that having you repay your student debt is unjust, and that your ordered recoupment complies with established rules and regulations. In connection with this AO your attorney provided a response which was received by this Board on 28 December 2021.

After careful and conscientious consideration of the entire record, the Board found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Moreover, the Board agreed with the comments provided in the AO.

The Board noted that in April 2017 you were placed on aptitude probation for failure to meet Navy PFA standards and told that if you failed to improve, you could be put on LOA or dis-enrolled. In October 2017, you were placed on physical readiness LOA for failing to meet the terms of aptitude probation. You argue that your failure to pass the Fall 2019 PFA was due injury sustained in an automobile accident in October 2018, and therefore your separation should have been for medical disqualification and not due to lack of physical conditioning. However, BUMED removed you from your MLOA in December 2019 and a medical waiver was granted. There is no indication that you were medically unfit – therefore, recoupment of scholarship funds was appropriate.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is 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.

2/16/2022

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Deputy Director

Signed by: █