



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

██████████
Docket No: 736-22
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-██████████

Ref: (a) 10 U.S.C. §1552
(b) USNAINST 1531.47C, Premedical/Predental Advising and Selection for
Medical/Dental Corps, 21 August 2001

- Encl: (1) DD Form 149 w/attachments
(2) History of Assignments
(3) USNA BMO E-mail message, subj: [Petitioner], sent on Tuesday, ██████████
@ 3:16 PM
(4) USNA Deputy Commandant for Professional Development E-mail message, subj: Re:
[Petitioner], Tuesday, ██████████ @ 3:59 PM
(5) USNA BMO E-mail message, subj: Re: [Petitioner], sent on Friday, ██████████
@ 2:26 PM
(6) USNA BMO E-mail message, subj: FW: [Non-DoD Source] Re: [Petitioner], sent on
Friday, ██████████ @ 3:47 PM
(7) USNA Commandant E-mail message, subj: Re: [Non-DoD Source] Re: [Petitioner],
sent on Friday, ██████████ @ 3:28 PM
(8) USNA Diploma
(9) NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office,
executed ██████████
(10) USNA SJA Memo, subj: Request for Advisory Opinion Regarding [Petitioner];
BCNR Docket No. NR20220000736, 15 March 2022
(11) Petitioner's E-mail message, subj: Re: [Non-DoD Source] Re: REBUTTAL
REQUEST BCNR DOCKET NR20220000736, sent on Thursday, 31 March 2022
@ 7:02:20 AM

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, hereinafter referred to as the Board, requesting that his naval record be corrected to reflect a commissioning date of 22 May 2020 rather than 21 August 2020, with corresponding adjustments to his lineal number and pay and allowances.

2. The Board reviewed Petitioner's allegations of error or injustice on 21 April 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board consisted of the

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enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all of the evidence 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. Paragraph 6 of reference (b) provides as follows:

Midshipmen second class who wish to be considered for selection to the Medical or Dental Corps shall submit their formal applications to the [Premedical and Presidential Advising Committee (PPAC)] prior to the last day of the spring semester. Shortly after the start of the fall semester, the PPAC will make its recommendations concerning Medical and Dental Corps selection of first class midshipmen to the Superintendent via the Academic Dean and Provost and the Commandant. The PPAC will interview and evaluate the applicants, recommending not more than 15 principals and not more than 3 alternates. Criteria to be used by the PPAC in making its recommendation are aptitude and motivation for a career in Navy medicine or dentistry, academic performance, Medical or Dental College Admission Test scores from the tests taken in the spring of second class year or earlier, military performance, and (if available) acceptance to a medical or dental school. The PPAC will adhere to high standards and is under no obligation to recommend 15 principals. Midshipmen not approved by the Superintendent may not enter the Medical or Dental Corps nor may they attend any medical or dental school directly after graduation even if they are accepted by such a school. Midshipmen who have not been selected by a medical or dental school by 10 May will be assigned to an Unrestricted Line community where billets are still available if they are physically qualified or to a Restricted Line or Staff Corps community where billets are still available if not physically qualified for commissioning in the Unrestricted Line. Midshipmen will be allowed to express a community preference.

c. On 30 June 2016, Petitioner reported to the United States Naval Academy (USNA) for duty as a Midshipmen. See enclosure (2).

d. Petitioner submitted a formal application to be considered for selection to the Medical Corps prior to the end of his second class year, and was among those selected by the PPAC. The Superintendent's approval of the PPAC selections, however, was approximately four to six weeks later than usual, likely due a high turnover in staff and a newly appointed Superintendent who was unaware of the potential ramifications of such a delay. Upon receipt of this approval, Petitioner applied for admission to the Uniformed Service University of Health Services (USUHS). Due to the delay in the initiation of the application process, however, many of USUHS's rolling admissions spots were already filled, and Petitioner was relegated to the wait-list for admission. See enclosure (3).

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e. By e-mail dated 21 April 2020, the USNA Brigade Medical Officer (BMO) requested that the USNA Commandant approve a delay in Petitioner's commissioning date to provide him the opportunity to be admitted off of the USUHS wait-list. In this e-mail, the USNA BMO informed the Commandant that the USUHS Admissions Director had informed him that Petitioner was a strong candidate to be selected off of the wait-list for one of the spots that was expected to open up prior to the 15 June 2020 start date. He acknowledged the 10 May deadline for medical school acceptance in reference (b) and that Petitioner would otherwise be assigned as a Surface Warfare Officer (SWO) if not accepted by that date, but requested that the Commandant nonetheless delay Petitioner's commissioning date if necessary to provide him the opportunity to be selected off of the waitlist and to commission into the Medical Corps. In making this request, the USNA BMO stated that he had "not asked [Petitioner] if he would want [his commission to be delayed for this purpose], but I assume he would jump at the chance. Otherwise he will need to wait 2 years to be able to apply for a lateral transfer." See enclosure (3). This request was favorably endorsed on the same day by the USNA Deputy Commandant for Professional Development. See enclosure (4).

f. By e-mail dated 8 May 2020, the USNA BMO followed up on his previous request of 21 April 2020 to confirm with the Commandant whether Petitioner could remain a Medical Corps select. In this e-mail, the USNA BMO stated, "[Petitioner] is happy to be a delayed grad as we discussed before if he does not have confirmation on the 19th [of May] with the final call being at the start of USUHS if he does not get a last minute acceptance."¹ See enclosure (5).

g. After receiving the e-mail message described in paragraph 3f above, the USNA Commandant confirmed his concurrence with the delay of Petitioner's commissioning date in order to provide Petitioner with the opportunity to be selected for attendance at USUHS off of the wait-list. See enclosure (6).

h. On [REDACTED], Petitioner graduated from USNA, but he did not commission with his other classmates. See enclosure (8).

i. Unfortunately, Petitioner was not subsequently selected to attend USUHS off of the wait list. He spent the summer of 2020 living in [REDACTED] at USNA in the grade of Midshipman. See enclosure (1).

j. On [REDACTED], Petitioner was appointed as an Ensign and assigned as a SWO. See enclosure (9).

k. Petitioner contends that his commission was delayed due to an administrative error and requests that his commissioning date be corrected to reflect the date that it would have occurred but for this error. He contends that he was informed for the first time on [REDACTED] that he would not be commissioning on time "due to the paperwork not being completed," and that he ended up waiting for three months to be commissioned. During this period, he asserts that he was expected to perform the military duties assigned to him event without a commission or having an official role in the Navy. See enclosure (1).

¹ The USNA BMO acknowledged by e-mail dated 11 March 2022 that he did not have any documentation of Petitioner's acceptance of this plan because "it was a verbal discussion I had with him." See enclosure (6).

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l. By memorandum dated 15 March 2022, the USNA Staff Judge Advocate (SJA) provided an advisory opinion (AO) for the Board's consideration which recommended that Petitioner's request be denied. In making this recommendation, the USNA SJA stated that "it is clear from [Enclosure (5)] that [Petitioner] was aware of and approved of his delayed commissioning to afford himself a chance to secure USUHS admission and Medical Corps service." The SJA further noted that the BMO was assisting Petitioner in his efforts to join the Medical Corps, and had no reason to fabricate Petitioner's involvement in and approval of the delayed commissioning decision. See enclosure (10).

m. By e-mail dated 31 March 2022, Petitioner submitted a rebuttal statement to the AO provided by the USNA SJA. In this rebuttal, Petitioner acknowledged that he had spoken to the USNA BMO about delaying his commission in order to give himself an opportunity to be accepted at USUHS. He stated that he initially believed that he would benefit by delaying his commission in order to maintain the possibility of acceptance into the USUHS.² However, he claims that as the 10 May 2020 deadline approached, he learned from the USUHS Admissions Director that his chances of being selected off of the wait-list had diminished due to the high acceptance rate of offers tendered. Based upon this information, Petitioner contends that he decided to forego his goal of attending medical school and started the process on 10 May to change his service selection in accordance with reference (b). He claims that "[t]he Naval Academy was aware that I was not going to be delaying my commission and that I was following the appropriate procedures to change my service selection." See enclosure (11).

MAJORITY CONCLUSION:

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

Specifically, the Majority found that USNA's failure to follow its own policy caused a delay in Petitioner's commissioning date which has prejudiced him relative to his peers. Reference (b) provides that "Midshipmen who have not been selected by a medical ... school by 10 May will be assigned to an Unrestricted Line community where billets are still available if they are physically qualified or to a Restricted Line or Staff Corps community where billets are still available if not physically qualified for commissioning in the Unrestricted Line." This process was established to provide sufficient time for any Midshipmen who had been approved by the Superintendent to enter the Medical or Dental Corps but who had been unsuccessful in attaining the required medical or dental school acceptance to be processed for commissioning into a different community in time for graduation. By deviating from this established policy, USNA created the situation in which Petitioner's commissioning date was delayed and he has been disadvantaged for pay and future promotion eligibility purposes relative to the peers that we should have been commissioned with on [REDACTED]. The Majority also noted that USNA failed to maintain any official documentation to reflect Petitioner's reported knowledge of and concurrence with the plan to delay his commissioning date, so it did not believe it appropriate that Petitioner should suffer from USNA's deviation from its published procedures in this regard.

² By not delaying his commission, Petitioner was informed that it would be his service community (SWO), rather than USNA, which would decide whether he could attend USUHS if later accepted off of the wait-list.

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Accordingly, the Majority believed that the relief requested by Petitioner was appropriate in the interests of justice.

MAJORITY RECOMMENDATION:

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

That Petitioner's NAVPERS 1000/4, Officer Appointment Acceptance and Oath of Office, be amended as follows:

- Block 19 (Permanent Grade Date): Change from "2020-08-21" to "[REDACTED]"
- Block 21 (Present Grade Date): Change from "2020-08-21" to [REDACTED]
- The appointment date in the block reflecting the authenticator's signature be changed from "18AUG2020" to [REDACTED]
- The date reflecting Petitioner's acceptance of his appointment as an Ensure be changed from the "21 day of August 2020" to the "22nd day of [REDACTED]"

That Petitioner's official record be scrubbed to identify and correct his commissioning date consistent with this decision, to include the correction of his lineal number to reflect what it would have been if he had been commissioned on [REDACTED]

That this record of proceedings be forwarded to the Defense Finance and Accounting Service to conduct an audit of Petitioner's pay records to determine any retroactive pay, allowances, and benefits which may accrue to Petitioner as a result of the corrections directed.

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 warranting relief.

The Minority found no error or injustice in USNA's deviation from its own internal procedures in Petitioner's case. The proponent of any regulation which is not based upon statute or a higher-level regulation may grant exceptions to such a regulation on a case-by-case basis for good cause. In this case, the USNA Commandant granted an exception to the process published in reference (b) in order to give Petitioner an opportunity to be accepted by USUHS before being committed to the SWO community. He did this for Petitioner's clear benefit, and with Petitioner's consent and approval. The Minority did not find Petitioner's explanation regarding his "change of heart" to be credible for three reasons. First, Petitioner omitted the details of his delayed commissioning date in his original application, describing it only as an "administrative error" while saying nothing about his original agreement to the commissioning date delay. It was only after receipt of the USNA SJA's AO, which included the e-mail traffic reflecting that Petitioner had agreed to the delay in his commissioning date, that Petitioner acknowledged that he had agreed to the delay and explained this "change of heart." Second, Petitioner's alternate assignment to the SWO community if not sooner accepted by USUHS was known as early as 21 April 2020 per enclosure (3). For this reason, Petitioner's claim that he "began the process of

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changing [his] service selection” on 10 May, was not credible. Finally, given that the USNA BMO was personally involved in assisting Petitioner to obtain his desired commission in the Medical Corps, the Minority believed it highly unlikely that he would not have been privy to Petitioner’s described “change of heart” and decision not to pursue medical school and a career in the Medical Corps. The absence of any mention of such a decision by the USNA BMO in enclosure (6) was telling in this regard for the Minority. Petitioner’s commissioning date was not delayed due to an administrative error. Rather, it was delayed for the Petitioner and with his express consent in order to provide him the opportunity to be accepted by USUHS before the door to medical school was essentially shut to him for at least a couple of years in the SWO community. That Petitioner now has a later commissioning date than his peers is not an injustice, but rather was the risk accepted by Petitioner to wait on the decision from USUHS.

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.

5/23/2022

[REDACTED]

Executive Director

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

MAJORITY Recommendation Approved (Grant Relief, consistent with the Majority recommendation above)

MINORITY Recommendation Approved (Deny Relief)

7/11/2022

[REDACTED]

Acting Assistant General Counsel (M&RA)

Signed by: [REDACTED]