



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

■  
Docket No. 2841-22  
Ref: Signature Date

Dear ■■■■■:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 July 2022. The names and votes of the members of the panel 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 this 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. In addition, the Board considered the advisory opinion (AO) contained in Staff Judge Advocate, U.S. Naval Academy letter of 24 May 2022. You were provided an opportunity to comment on the AO but chose not to do so.

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.

On 30 June 2011, you entered the U.S. Naval Academy (USNA) for training. You successfully completed your first two years of service and commenced your third year (Second Class). During your Second Class year, you were involved in two alcohol related incidents that resulted in your referral to the USNA Administrative Conduct System. Specifically, on 1 February 2014, while you were on probation for an underage drinking incident, you admitted to drinking alcohol and, later, alcohol was found in your room. As a result, your case was referred to Superintendent, USNA for adjudication.

Subsequently, on 21 February 2014, you tendered your resignation as a Midshipman at the USNA to the Secretary of the Navy. As part of your qualified resignation request, you acknowledged that charges alleging violations of the Administrative Conduct System had been levied, were pending against you, and that your rights with regard to the processing of these charges had been fully explained to you. With respect to violation the Administrative Conduct System, you admitted the substantial truth of the alleged misconduct. You further acknowledged that you could be discharged from the Naval Service with a General (Under Honorable Conditions) Discharge, consulted with counsel regarding the nature of a General (Under Honorable Conditions) Discharge, and understood the potential effects it may have on your future. Finally, you admitted that you would be in debt to the government for your advanced educational assistance.

As part of your resignation package, on 21 February 2014, you also acknowledged your reimbursement options pertaining to your separation from the USNA. Specifically, you acknowledged your two-year enlisted obligation, that you may be ordered to active duty, or be ordered to reimburse the government in the amount of \$131,117.09. At that time, you stated your preference to provide monetary recoupment in lieu of active duty service.

On 13 March 2014, Superintendent, USNA forwarded your qualified resignation request to the Assistant Secretary of the Navy (M&RA) with a recommendation that your resignation be accepted and that you be ordered to repay your advanced educational benefits via monetary recoupment vice enlisted service based on your two incidents of misconduct.

On 4 April 2014, the Assistant Secretary of the Navy (M&RA) accepted your resignation request and directed you be discharged from the Naval Academy with an Honorable conditions discharge characterization [separation code BNC (Unacceptable Conduct)]. Based on the Superintendent's recommendation, ASN (M&RA) ordered that you fulfill your obligation arising from the educational benefits received from attending the USNA through monetary recoupment in the amount of \$131,117.09. As a result, on 4 April 2014, you were honorably discharged from the Naval Academy for unacceptable conduct.

On 14 April 2014, Superintendent, USNA notified Defense Finance and Accounting Service, Denver Center of your discharge from the USNA. DFAS was requested to collect your service academy obligation in the amount of \$131,117.09. You subsequently submitted a request to have your debt reduced. On 6 April 2020, the Deputy Assistant Secretary of the Navy (Military Manpower and Personnel) denied your request.

The Board carefully considered your application, supporting documents, and contentions for relief. These included, but were not limited to, your belief that you were treated inequitably based on an existing double standard that treated student athlete midshipmen differently than other midshipmen. Further, you contend that an injustice exists based on your failed attempts to enlist in the Navy. In your application, you allege that, despite your best efforts to enlist, you were not provided any support by the recruiting office in ■■■■■.

As part of the Board's review, it considered the AO from the USNA. The AO stated in pertinent part:

We can state unequivocally that USNA does not treat student athletes differently than any other midshipmen when it comes to adjudication of misconduct, handling of qualified resignations, or due process. Eligibility for monetary recoupment is determined initially by what year the underlying misconduct occurred. Based on the regulations and policy set forth in references (g) and (h), fourth-class and third-class midshipmen (freshmen and sophomores), as well as upper class midshipmen (juniors and seniors) for whom the misconduct occurred prior to the third academic year, do not owe monetary recoupment. If the misconduct occurred during the third academic year – as it did for Petitioner – or later, monetary recoupment is an option; strong weight is given to the preference of the midshipmen, although ultimately that decision is made by the ASN (M&RA), with the Superintendent making a recommendation.

USNA has no knowledge about what may or may not be true in relation to Petitioner’s allegations against the U.S. Navy recruiting office in ■■■■■, ■■■■■. Therefore, we do not think it appropriate to take any position with regard to this claim. However, it is fair to note that, first, Petitioner apparently made no effort to enlist prior to 2018, four years after resigning from USNA. Second, if Petitioner actually wanted to make “a good faith effort to enlist,” he could have – over the last eight years – visiting recruiters from any other branch of the service or Navy recruiters in different locations than ■■■■■. Yet, he does not mention any such effort.

The AO concluded, “[a]fter careful review of Petitioner’s case, USNA’s position is that Petitioner’s requested relief should be denied. Petitioner was afforded all due process throughout the disenrollment process, and there is no legal basis for reconsidering his case. There was no legal error or injustice and thus no legal basis for waiving or reducing the monetary recoupment ordered. The monetary recoupment ordered by the ASN (M&RA) is proper in law and fact under references (f) and (g). Petitioner specifically requested monetary recoupment in lieu of active duty service to fulfill his obligation, and it would be an injustice to every other midshipman and to the American taxpayer to annul his election now.”

Based on their review, the Board determined that insufficient evidence of error or injustice exists to grant relief in your case. In making their determination, the Board substantially concurred with the AO. First, the Board found no evidence that you were treated unjustly based on an existing double standard applicable to student athletes. As pointed out in the AO, the evidence shows that the cited case involving USNA athletes involved an Article 32 investigation and that those midshipmen dismissed from USNA committed misconduct during their second year, prior to incurring a monetary obligation or service commitment. Therefore, the Board found no disparity in treatment between those midshipmen and you. Further, you provided no evidence that the applicable regulations were not properly applied to you, that you did not commit the misconduct that formed the basis for your disenrollment from USNA, or that you were not obligated to repay your advanced educational obligation based on the circumstances of your case. In making this finding, the Board noted that you were afforded and acknowledged all required due process rights in your case. Second, the Board found no evidence to substantiate

your allegations that you were denied an opportunity to enlist in the Navy. In making this finding, the Board noted that you elected to repay your advanced educational assistance through monetary recoupment; an election that was granted by ASN (M&RA). In addition, you provided no evidence to support your allegations that you were denied enlistment by the Navy. Finally, the Board noted the approximately four year delay in your alleged attempts to enlist and noted that you made no effort to enlist in locations other than █. Ultimately, the Board concluded no injustice exists in your case since you failed to provide evidence that you exercised due diligence in your alleged attempts to enlist. As a result, the Board concluded that insufficient evidence of error or injustice exists with your monetary debt to the government. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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.

Sincerely,

8/4/2022

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Executive Director

Signed by █