



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

█
Docket No. 6033-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO FORMER █
█ XXX XX █ USMCR

Ref: Title 10 U.S.C. § 1552

- Encl:
- (1) DD Form 149
 - (2) NSTC 1533/135, Naval Reserve Officers Training Corps Scholarship Contract, signed 25 October 2018
 - (3) █ Unofficial Transcript, printed 30 December 2019
 - (4) █ Student Health Services Mental Health Consultation Note, 8 February 2018
 - (5) █ Student Disability Services, Disability Verification (Psychological), 8 February 2018
 - (6) █ NROTC CO Memo 1533 Ser 00/001, subj: Memorandum for the Record, 2 January 2020
 - (7) █ NROTC E-mail, subj: Fwd: Follow-Up, sent Saturday, August 3, 2019 @ 10:06AM (with preceding e-mail chain)
 - (8) Petitioner's Letter, 19 August 2019
 - (9) █ CO Memo 1533 Ser 00/552, subj: Notification of Performance Review Board, 20 August 2019
 - (10) Petitioner's Memo, subj: Waiver of Performance Review Board (PRB), 23 August 2019
 - (11) █ CO Memo 1533 Ser 00/620, subj: PNS Performance Review Board (PRB) Waiver ICO [Petitioner], 24 September 2019
 - (12) Petitioner's E-mail, sent Tuesday, October 22, 2019 @ 2:45 PM
 - (13) NSTC 1533/120, Naval Reserve Officers Training Corps Disenrollment Acknowledgement, 23 November 2019
 - (14) NSTC 1533/122, Naval Reserve Officers Training Corps Disenrollment Report, 23 November 2019
 - (15) █ CO Memo 1533 Ser 00/823, subj: Disenrollment Recommendation (Disenrollment – Academic) ICO [Petitioner], 3 December 2019
 - (16) NSTC CO Memo 1533 Ser N9/280, subj: Recommendation for Termination of Appointment as Midshipman, United States Marine Corps Reserve ICO [Petitioner], 1 May 2020
 - (17) NSTC 1533/124, Appointment Termination Disenrollment Authorization, 28 June 2020
 - (18) NAVPERS 1070/613, Administrative Remarks, 6 August 2020
 - (19) Petitioner's Medical Progress Notes
 - (20) Department of the Treasury, Bureau of the Fiscal Service Letter, 4 May 2022

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- (21) NSTC Memo 5800 Ser N00/1032, subj: Request for Recommendation and Comments in the case of [Petitioner], Docket No: #NR20220006033, 22 September 2022
- (22) Petitioner's Letter, subj: Request for Recommendation and Comments in the case of [Petitioner], Docket No: #NR20220006033, 16 October 2022
- (23) BCNR Memo Docket No: NR20220006033, subj: Advisory Opinion ICO [Petitioner], 28 February 2023

1. Pursuant to the provisions of the reference, 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 eliminate the debt that he incurred as a result of his disenrollment from the Naval Reserve Officers Training Corps (NROTC) program at [REDACTED].¹
2. The Board reviewed Petitioner's allegations of error or injustice on 9 March 2023, 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 included the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations and policies.
3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:
 - a. Petitioner enrolled as a student at [REDACTED] beginning in the Fall 2017 semester pursuant to an NROTC scholarship.² His cumulative grade point average (GPA) during his first semester was 2.00. Enclosure (3).
 - b. On 8 February 2018, Petitioner sought mental health treatment through [REDACTED] Student Health Services in fear of losing his NROTC scholarship based upon his first semester grades. He reported a lack of motivation and having felt number over the previously four to five years since his father committed suicide when he was 14 years old. Petitioner was diagnosed with Major Depressive Disorder (MDD) and Bereavement/Grief. The treating provider assessed the function impact upon Petitioner's learning abilities as "substantial." Enclosures (4) and (5).

¹ Petitioner specifically stated that he "would like to appeal the decision for recoupment and remove the debt and its attached interest and collection charges." The Board interpreted this as a request to correct his record in such a way as to remove his obligation to repay his debt.

² Petitioner's original NROTC scholarship contract was missing, but was reconstructed and signed on 25 October 2018. In exchange for the provision of scholarship benefits by the Navy, he agreed to accept a commission as an officer in the Marine Corps at the Secretary's discretion and incurred an eight-year military service obligation, of which four years was an active duty service obligation. The contract provided that he would incur either an active enlisted service obligation for a period of at least two years, or the obligation to reimburse the Navy for the cost of tuition and fees incurred on his behalf pursuant to the scholarship, at the Secretary's discretion if he were disenrolled from the NROTC Program for any reason, including medical or physical disqualification. See enclosure (2).

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c. Petitioner's GPA for the Spring 2018 semester was 2.82, which raised his cumulative GPA to 2.36. Enclosure (3).

d. Petitioner's GPA during the Fall 2018 semester was 1.34, including a failing grade in Algebra.³ Enclosure (3).

e. On 11 February 2019, a Performance Review Board (PRB) was convened to review Petitioner's academic standing. He reported during the proceedings that he was seeing a psychiatrist and a therapist. The PRB recommended that Petitioner be provided a Notification of Initiation of BUMED Review for Continuation Letter. Enclosure (6).

f. On 18 March 2019, the results of the above referenced PRB were signed, with one member nonconcurring with the recommendation to only provide a letter of initiation of BUMED review. Petitioner was placed on an academic leave of absence (LOA) from the NROTC program.⁴ Enclosure (6).

g. On 26 March 2019, Petitioner acknowledged the result of the PRB and his academic LOA from the NROTC program. Enclosure (6).

h. Petitioner finished the Spring 2019 semester with a 1.00 GPA.⁵ His transcript reflects that he took a LOA from [REDACTED] following this semester. Enclosure (3).

i. By e-mail dated 22 July 2019, Petitioner's NROTC instructor requested an update from Petitioner regarding his intentions with regard to the NROTC going forward. Enclosure (7).

j. On 2 August 2019, Petitioner responded to the e-mail referenced in paragraph 3j above, stating that he had decided to request to be dropped from the NROTC due to his medical situation. He stated that he would not be returning to [REDACTED], and would be taking time off to heal properly for the next several months. Included with this e-mail was a separate letter stating that he did not desire medical treatment from the military.⁶ Enclosures (7) and (8).

k. By memorandum dated 20 August 2019, Petitioner was notified that a PRB would be convened to investigate and to make recommendations regarding the cause and circumstances supporting Petitioner's request to be dropped from the NROTC program. Enclosure (9).

l. On 23 August 2019, Petitioner acknowledged receipt of enclosure (9), and waived all of his rights with regard to the PRB, to include the PRB itself. Enclosures (9) and (10).

m. By memorandum dated 24 September 2019, Petitioner's commander notified Petitioner of his intent to recommend that Petitioner be disenrolled from the NROTC program and directed to repay the scholarship benefits paid on his behalf. Enclosure (11).

³ This dropped his cumulative GPA back down to 2.00. Petitioner's NROTC course (Naval Leadership and Management I) was the only course in which he received a grade higher than a D+ during this semester.

⁴ Enclosure (2) reflects that Petitioner was not enrolled in any NROTC courses during the Spring 2019 semester.

⁵ This dropped Petitioner's cumulative GPA down to 1.77.

⁶ This statement was required because a BUMED review had already been initiated.

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n. On 22 October 2019, Petitioner indicated in an e-mail to his NROTC instructor that it was his understanding, based upon a previous conversation, that recoupment would not be required because he was disenrolled from the NROTC program due to mental health considerations. Enclosure (12).

o. On 23 November 2019, Petitioner acknowledged receipt of his commander's recommendation that he be disenrolled from the NROTC program, and indicated his intention not to submit a written response to the recommendation. Enclosure (11).

p. On 23 November 2019, Petitioner acknowledged his indebtedness to the U.S. government in the amount of \$39,812.00. See enclosure (13). He also requested a waiver of this recoupment requirement. In support of this request, he stated that "[d]ue to family issues, struggling with mental health and still in school, I have no means to pay recoupment back as of right now." Enclosure (14).

q. By memorandum dated 3 December 2019, Petitioner's commander recommended to the Commander, Naval Service Training Command (NSTC), that Petitioner be disenrolled from the NROTC program and required to repay his scholarship benefits. Petitioner's disenrollment package was forwarded without medical records. Enclosure (15).

r. By memorandum dated 1 May 2020, the NSTC Commander recommended that Petitioner be disenrolled from the NROTC program and required to recoup his scholarship benefits in the amount of \$39,812 in lieu of active enlisted service. Enclosure (16).

s. On 24 May 2020, the Commanding General, Marine Corps Recruiting Command, endorsed the recommendation of the NSTC Commander that Petitioner be disenrolled from the NROTC program and required to repay his scholarship benefits. Enclosure (16).

t. On 2 July 2020, the Deputy Assistant Secretary of the Navy (Military Manpower and Personnel) (DASN (MMP)) approved the NSTC Commander's recommendation, directing that Petitioner be disenrolled from the NROTC program and required to repay the scholarship benefits paid on his behalf in the amount of \$39,812.00. Enclosure (16).

u. Petitioner was disenrolled from the NROTC program effective 2 July 2020. Enclosure (17).

v. On 6 August 2020, Petitioner acknowledged his indebtedness to the U.S. Government in the amount of \$39,812.00. Enclosure (18).

w. On 3 February 2021, Petitioner attempted to commit suicide while he was under the influence of alcohol and cocaine, leaving superficial wounds on his neck and forearm. Enclosure (19).

x. By letter dated 4 May 2022, Petitioner was notified that the Defense Finance and Accounting Service (DFAS) referred his unpaid debt to the U.S. Department of the Treasury, Bureau of the Fiscal Service, for immediate collection. He was also advised that immediate

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payment of his debt was necessary to stop collection action and to prevent the accrual of additional interest, penalties, and administrative costs. As of the date of this letter, Petitioner's debt to the U.S. Government was \$51,768.00. Enclosure (20).

y. Petitioner contends that relief is warranted because he experienced severe mental health issues while at [REDACTED] and was therefore unable to perform academically. He states that his NROTC unit was aware of his mental health struggles, and that while they tried to be supportive and he engaged with mental health resources at [REDACTED], he was unable to regain academic standing. He further stated that the NROTC unit administrative supervisor advised him not to check the "mental health" box during disenrollment because it would prevent him from serving in the future, and that he agreed to this recommendation because he was ashamed of his situation. He has continued to struggle with mental health issues since his disenrollment, and has been hospitalized for self-harm. Included with his matters was a letter from his therapist detailing the course of his treatment and her working diagnoses of MDD, dysthymic disorder (related to complex/unresolved grief), adjustment disorder with anxiety (related to being a first generation college student and related struggles with acclimation), and Attention Deficient Disorder. His therapist expressed her professional opinion that "the combin[ation of] talk therapy and medication utilization would have helped significantly in [Petitioner's] overall mental health as well as success in school and in [his] ROTC program." Enclosure (1).

z. By memorandum dated 22 September 2022, NSTC provided an advisory opinion (AO) for the Board's consideration. The AO found no evidence on any error in the processing of Petitioner's disenrollment or in the subsequent order of recoupment. It noted that his NROTC unit had trouble retrieving the proper medical documentation from Petitioner for the BUMED review initiated after the first PRB.⁷ Although Petitioner claims that his NROTC unit was aware of his mental health struggles, the AO notes that it is unclear when the unit became so aware. Although Petitioner started to receive mental health services in February 2018 after his poor academic performance in his first semester, the unit did not initiate a BUMED review until a year later after Petitioner had incurred significant additional debt and continued to struggle with mental health and academic issues. The AO noted that while Petitioner seems to have endured genuine mental health struggles, the evidence provided was not clear as to whether his NROTC unit was aware of these struggles prior to his February 2019 PRB. While finding no error, the AO conceded that there is some evidence to support Petitioner's contention that his recoupment requirement was unjust. It found that, while such recoupment complies with established rules and regulations, Petitioner may be able to prove recoupment to be unjust if he provides additional evidence proving that his NROTC unit was aware of his mental health issues when he first sought treatment in February 2018. Enclosure (21).

aa. By letter dated 16 October 2022, Petitioner provided a response to the NSTC AO referenced in paragraph 3aa above. He claimed that he was not capable of properly following the process for both PRB and BUMED requirements because of his mental health diagnosis. He also stated that he was ashamed to inform his NROTC unit of his mental health struggles, and experienced severe distress in trying to communicate it to them. It was because of that shame that he did not seek medical attention from the military. He also reiterated his previous claim

⁷ The counseling letter provided by Petitioner did not include any clinical diagnosis.

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that his unit administrative supervisor advised him not to bring up his mental health concerns during the disenrollment process so that he would not disqualify himself from future service. Petitioner claims that he “quickly learned that there is not safe space to talk about mental health issues in the Marine Corps” during his time in NROTC. Enclosure (22).

bb. By memorandum dated 28 February 2023, the Board’s in-house mental health professional provided another AO for the Board’s consideration. She found evidence that Petitioner was diagnosed with a mental health condition during the period of his NROTC scholarship, and that it is plausible that his academic performance was negatively impacted by his mental health concerns. Enclosure (23).

CONCLUSION:

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

While there was no error in requiring Petitioner to repay the scholarship benefits paid on his behalf under the circumstances, it is apparent that his inability to fulfill his contractual obligation was due to his mental health condition and therefore beyond his control. The assessment of Petitioner’s mental health provider in February 2018 was that his condition had a substantial impact upon Petitioner’s learning functions, which contributed to his inability to perform academically. Regardless of when his NROTC unit learned of his condition, or why their awareness of it may have been delayed, it appears that neither the chain of command nor the DASN (MPP) was fully apprised of the extent and impact of his mental health concerns when recommending and approving the recoupment of his scholarship benefits. In this regard, the Board found credible Petitioner’s claim that he was ashamed to discuss his mental health concerns with his chain of command, and that he may have been discouraged by an NROTC official from raising the issue during the disenrollment process for fear of disqualification from future service. Further, even if his NROTC unit was not aware of Petitioner’s mental health issues when he sought treatment in February 2018, they became aware of it no later than the February 2019 PRB, prior to the initiation of his disenrollment and presumably additional expenditures made on his behalf. As such, the ultimate decision to direct recoupment was made without complete understanding of the circumstances. The Board believed that these circumstances, along with Petitioner’s age, lack of guidance, and likely inability to understand the gravity of his decisions at the time, were sufficient to justify the waiver of Petitioner’s contractual obligation to repay his scholarship benefits.

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 naval record be corrected to reflect that the DASN (MPP) did not approve the recommendation that Petitioner be required to repay his scholarship benefits in the amount of \$39,812 when his disenrollment from the NROTC program was approved on 2 July 2020, but rather that Petitioner’s request for waiver of recoupment was approved.

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That a copy of this decision be forwarded to the Defense Finance and Accounting Service (DFAS), and that the DFAS conduct an audit of Petitioner's finance records to determine whether Petitioner is due any reimbursement for any previous payments made and take action to stop any further collection activity by the Department of the Treasury.

That a copy of this record of proceedings be filed in 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.

5/1/2023

[REDACTED]
Executive Director

ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

[REDACTED] Board Recommendation Approved (Grant Relief – I concur with the Board's conclusion and therefore direct the relief recommended by the Board above.)

— Board Recommendation Disapproved (Deny Relief – I do not concur with the Board's conclusion that the recoupment of Petitioner's educational expenses constitutes an injustice. As the Board stated, there was no error in requiring Petitioner to repay his scholarship benefits under the circumstances. Petitioner's scholarship contract provided that he could be required to repay his scholarship benefits if he was disenrolled from the NROTC program for any reason, to include medical or physical disqualification. Further, the decision made by the DASN (MPP) to direct recoupment was made with knowledge that mental health concerns were involved in the disenrollment decision. Accordingly, I find no injustice in requiring Petitioner to repay the Government for expenditures made on his behalf.)

[REDACTED]
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

Date: 7/28/23