



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. 6670-23
Ref: Signature Date

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Dear █:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code, and the Order of the United States District Court for the █ (Case No. █), filed 7 August 2023, remanding your case to the Board for Correction of Naval Records [hereinafter referred to as the Board] for reconsideration of its previous denial of your request for relief in Docket No. 5304-21. Specifically, the █ directed the Board to consider the content of your memorandum in support of your motion for summary judgment, filed 19 July 2023,¹ in addition to your original application for Docket No. 5304-21. After careful review and reconsideration of all the evidence of record in accordance with the Order of the █, the Board found insufficient evidence of any probable material error or injustice warranting relief. Accordingly, your application has been denied.

A three-member panel of the Board, sitting in executive session, reconsidered your application *de novo* on 14 September 2023. None of the panel members who reconsidered your application on 14 September 2023 participated in the previous review of your case in Docket No. 5304-21. The names and votes of those panel members will be furnished upon request. Your allegations of error or injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board and the Order of the █. Documentary material considered by the Board included the Order of the █, filed 7 August 2023; Document No. 18; the administrative record for your case before the █; the entire case file for Docket Nos. 5304-21 and 3923-18, which included your underlying application in Docket No. 5304-21, a 4 November 2021 advisory opinion (AO) provided by the Naval Service Training Command (NSTC), your rebuttal to that AO dated 29 November 2021, NSTC's response to your rebuttal dated 24 January 2022, and your surrebuttal dated 25 February 2022; relevant portions of your naval record; and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would not materially add to its understanding of the issues involved in your case. Accordingly, the Board

¹ Hereinafter referred to as "Document No. 18."

found that a personal appearance was not necessary and considered your case based upon the evidence of record.

Factual Background. Following is the factual background of your case based upon relevant portions of your naval record and the matters you submitted for the Board's consideration:

You enlisted in the Navy and began a period of active service on 23 November 2004. In 2011, you entered the Seaman to Admiral-21 (STA-21) program through the Naval Reserve Officer Training Corps (NROTC) [REDACTED].²

In May 2013, non-judicial punishment (NJP) proceedings were initiated against you for alleged violations of Articles 86 and 107, Uniform Code of Military Justice (UCMJ). These charges were ultimately dismissed due to the lack of clear counseling and remediation efforts, but you were warned about your conduct.

In June 2013, a Performance Review Board (PRB) recommended your disenrollment from the STA-21 program for aptitude, honor, and disciplinary issues. Included among the aptitude bases for the PRB's recommendation was that you received a failing grade in Calculus II. During this PRB hearing, you claimed that your behavioral issues during the Spring 2013 semester were due to stress caused by some troubling family-related life events in late 2012, including finalization of your divorce, your grandmother's death, and a minor stroke experienced by your mother.

You reenrolled in Calculus II at [REDACTED] for the Fall 2013 semester.³ However, in October 2013 you also enrolled in and completed a Calculus II course at [REDACTED]. The [REDACTED] course was an online course, of which you did not notify or seek approval from any NROTC Unit [REDACTED] personnel.⁴

In November 2013, the Commander, NSTC (CNSTC), formally disapproved the PRB's recommendation from June 2013 that you be disenrolled from the STA-21 program, and instead placed you on academic probation.⁵ You were required to retake Calculus II, for which you needed only to earn at least a "C" in order to satisfy all academic commissioning requirements.

On 26 November 2013, your officer instructor (OI) sent an e-mail to your primary e-mail address directing you to provide a grade memorandum detailing your anticipated grades for the semester⁶ and to sign up for end-of-term academic counseling. You signed up for the counseling, but did

² You were enrolled as a student at [REDACTED].

³ You were enrolled in only three courses during the Fall 2013 semester: Calculus II, a Political Science class, and Beginning Golf.

⁴ [REDACTED] allowed the credit for this class to be transferred from [REDACTED], but the NROTC did not permit on-line courses to satisfy Calculus and Physics requirements for the STA-21 program.

⁵ The CNSTC also granted you a medical waiver to allow you to be commissioned despite the discovery of your color-blindness.

⁶ Final grades were not due from [REDACTED] professors until the end of the year, but since the commissioning ceremony was scheduled for 21 December 2013, the NROTC Unit [REDACTED] midshipmen expected to graduate were directed to obtain their expected grades from their professors to validate their satisfaction of the academic commissioning requirements.

not submit the grade memorandum. You were the only intended recipient of the e-mail who claimed not to have received it and failed to provide the grade memorandum.

On 16 December 2013, when questioned about the grade memorandum, you informed your OI that you were unaware of the requirement. You also informed the OI that you anticipated earning a “C” in Calculus II at that time, but said nothing about the [REDACTED] online course which you had already completed and for which you received an “A.” Accordingly, you were directed to submit a grade memorandum in advance of the commissioning ceremony so that your academic qualifications could be confirmed. You obtained a memorandum from [REDACTED], dated 16 December 2013, indicating that the [REDACTED] course had been accepted for transfer and was included in your transcript for graduation, but did not immediately provide this document to NROTC Unit [REDACTED] personnel.

You failed to provide a grade memorandum in advance of the 21 December 2013 commissioning ceremony. You claim that you were unable to complete the grade memorandum because the university had shut down for the semester break and your [REDACTED] Calculus II professor was out of the country. However, you continued not to make NROTC Unit [REDACTED] personnel aware of the [REDACTED] Calculus II course, even though you had completed it in October and had already obtained a memorandum from [REDACTED] indicating that the university had accepted the course for transfer credits.

Having failed to confirm your eligibility to be commissioned as of the date of the scheduled commissioning ceremony, you were informed by memorandum dated 21 December 2021 that you would be allowed to participate the Joint ROTC Commissioning Ceremony, but that your participation “DOES NOT” signify an official commissioning.⁷ Specifically, you were informed that your actual commissioning would not occur “until/if all qualifications and administrative requirements are fully verified. Those actions HAVE NOT yet been completed in your case.” You acknowledged receipt of this notification by signature that same date.

On 23 December 2013, the first business day following the commissioning ceremony, you submitted a degree audit report showing you had received a “D” in the [REDACTED] Calculus II course, but for the first time informed NROTC Unit [REDACTED] personnel that you had also enrolled in Calculus II at [REDACTED], without their knowledge or approval, and received an “A,” which was successfully transferred to [REDACTED].⁸ Upon receipt of this information, you were asked to provide a syllabus of the [REDACTED] Calculus II course so that NROTC Unit [REDACTED] personnel could determine whether it would satisfy the STA-21 academic requirements.

⁷ The evidence reflects that your mother was town for the commissioning ceremony. Accordingly, it was entirely proper and decent to allow you to participate in the ceremony, with the understanding that you were not to be actually commissioned until your qualifications for such commission were verified. In this regard, the Board acknowledges that NROTC [REDACTED] provided that “[u]nder no circumstances will a student who has not completed all requirements for commissioning be permitted to execute an oral or written acceptance and Oath of Office,” but this is a local regulation for which the proponent (i.e., the NROTC Unit [REDACTED] commander) may grant exceptions on a case-by-case basis.

⁸ The “D” that you received in the [REDACTED] Calculus II course was subsequently raised to a “C.” You explained during your subsequent PRB that you followed up with the professor and teaching assistant, and discovered that there were some quiz/assignments grades missing from your record.

It was subsequently determined that the [REDACTED] course was an online course, and therefore did not satisfy the STA-21 academic requirements, and that you doctored the syllabus you provided to remove inferences of its online status.

Due to discrepancies between your response when questioned by your OI and the information he had already received from [REDACTED] regarding the Calculus II course in question,⁹ a preliminary inquiry officer (PIO) was appointed by memorandum dated 23 December 2013 to inquire in the facts and circumstances surrounding your claim to have met the NROTC requirements for completion of Calculus II during the Fall 2013 semester.

By memorandum dated 2 January 2014, you made the following statement in writing as part of the preliminary inquiry (PI) of your conduct:

In the fall Semester I took Calculus II at [REDACTED] State University. I had reservations about the professor, understanding that the professor is a difficult grader. Therefore, I enrolled at [REDACTED] Calculus II class that took place in October 2013 with Professor [S.D.], in order to ensure I passed Calculus II with a letter grade of "C" or better. *I took the Calculus II class at [REDACTED] in a classroom setting with the professor present in the room and did the homework online. All tests I took were in the classroom with the professor.* Unfortunately, I received a low grade on my final exam in Calculus II class at [REDACTED], which lowered my overall grade to a "D". Therefore, this is the reason I am trying to have my Calculus II class from [REDACTED] be accepted by my NROTC unit.

...

Also, an e-mail was sent out requesting my preliminary grades from the NROTC Unit at [REDACTED]. The reason I did not turn it in was, because I never received it in my email account.

(Emphasis added).

By memorandum dated 17 January 2014, the PIO submitted the results of his PI. Later that day, the NROTC Unit [REDACTED] Commanding Officer notified you that he had determined that you failed to achieve commissioning criteria based upon the "D" that you earned in Calculus at [REDACTED] during the Fall 2013 semester. The commander acknowledged that you completed the course through [REDACTED] but noted that that course is not listed among the approved Calculus courses for NROTC and was a distance learning course, and thus was not sufficient to comply with commissioning criteria.¹⁰ He also noted that you failed to include this course on your latest Degree Completion Plan, which prevented your Academic Advisor from recognizing your intent to rely upon the [REDACTED] course. Accordingly, you were instructed to register for an approved Calculus II course in the Spring 2014 semester.

⁹ Your OI confirmed with the professor of the [REDACTED] course that this was an entirely on-line class, contrary to your claims that you completed it in a classroom environment with the professor present.

¹⁰ Although you later successfully petitioned the [REDACTED] Calculus II professor to upgrade your grade for the Fall semester to a "C," that had not yet occurred by this point.

Based on the PI findings, on 23 January 2014 you were charged with failure to obey a lawful order in violation of Article 92, UCMJ,¹¹ and two specifications of false official statement in violation of Article 107, UCMJ.¹² These charges were referred to NJP on 30 January 2014. By memorandum dated 7 February 2014, you were notified that a PRB would be convened to make recommendations concerning your alleged honor code violations. This memorandum informed you of your rights with regard to the PRB, and that the PRB would be convened on 15 February 2014.

On 12 February 2014, you were found guilty at NJP of the charged violation of Article 92, UCMJ,¹³ and one of the charged specifications of false official statement in violation of Article 107, UCMJ.¹⁴ According to the commander who administered this NJP, you admitted to the false official statement when confronted with evidence that you doctored the syllabus, but maintained your contention that you were unaware of the order because you did not receive the e-mail. You received a punitive letter of reprimand (PLOR) and were reduced one grade to E-5.¹⁵¹⁶

On 18 February 2014, you elected not to exercise your right to appeal the NJP.

On 13 February 2014, you signed a letter addressed to the members of the PRB in which you stated, "I am guilty of lying and not following an order." You went on to apologize for your conduct and to discuss your lessons learned, and to provide extenuating factors for your behavior. Specifically, you described in general terms your anxiety and depression over the course of the previous year.¹⁷ You also expressed your thankfulness "that the command leadership has supported me in my recovery."

The PRB convened as scheduled on 15 February 2014. The PIO referenced above was appointed as one of the voting members of this PRB. During the course of the hearing, the PIO asked why you had "calmly, deliberately, and repeatedly lied to his face" during the PI. You responded that you were "in denial" and that you didn't realize that you needed help at that time. In response to another member's comments that you had given a presentation to the entire student battalion on integrity during the past semester but had continued to display integrity issues, you stated that you "had experienced another lapse in judgment." You also stated that you felt yourself capable of learning from your mistakes. In response to a question posed about whether you told not to enroll

¹¹ The order that you allegedly failed to obey was to submit the signed grade memorandum.

¹² The false official statements alleged were from the memorandum that you provided in the context of the PI of your conduct, dated 2 January 2014. Specifically, the charges cited your statement that you "took the Calculus II class at [REDACTED] in a classroom setting with the professor present in the room and did the homework online. All tests I took were in the classroom with the professor" and that "[t]he reason [you] did not turn [the grade memorandum] in was, because [you] never received it in [your] email account," both statements allegedly having been made with the intent to deceive on or about 2 January 2014.

¹³ See footnote 11.

¹⁴ See footnote 12. The false official statement charge regarding your claim never to have received the e-mail ordering you to provide the grade memorandum was dismissed.

¹⁵ The reduction to E-5 was suspended for six months. That suspension was never vacated, so this punishment was never executed.

¹⁶ The PLOR is not present in your naval record, and you have never provided a copy of it to the Board for review. However, its issuance does not appear to be in doubt.

¹⁷ A command directed examination resulted in a diagnosis for adjustment disorder (with mixed depression and anxiety).

in Calculus II at another institution, you admitted that you had been so instructed but that you were “trying to hedge [your] risk of falling short of commissioning requirements if [you] didn’t earn a ‘C’ or better” in the [REDACTED] Calculus course. Finally, when asked what you would do as a commissioned officer if faced with a Sailor in your exact situation, you ultimately admitted that an administrative separation might be appropriate and likely the best course of action. After hearing all of the evidence, the PRB unanimously recommended that you be disenrolled from the NROTC and STA-21 program.

By memorandum dated 27 February 2014, the NROTC Unit [REDACTED] Commanding Officer endorsed PRB findings and recommendation, and recommended to the CNSTC that you be disenrolled from the STA-21 program.

After the CNSTC approved the recommendations of both the PRB and the NROTC Unit [REDACTED] [REDACTED] commander, you were disenrolled from the NROTC program and returned to the Fleet until your discharge from active duty upon completion of your obligated service on 26 January 2017. You were not required to repay the educational expenses incurred on your behalf through the STA-21 program.

On 27 June 2019, the Board found the existence of an error in your 2014 PRB proceedings in that the PIO was permitted to serve as a voting member in Docket No 3923-18.¹⁸ Accordingly, the Board directed that a new PRB be convened to make recommendations regarding your alleged honor violations while serving as an officer candidate at NROTC Unit [REDACTED].

On 13 May 2020, a new PRB was convened pursuant to the Board’s decision in Docket No. 3923-18 to consider and make recommendations regarding your alleged honor violations from 2014. You were represented by counsel at this hearing, and presented multiple witnesses. After hearing all of the evidence, the PRB again found that you failed aptitude standards by not following orders and, more importantly, making a false official statement to the command. The PRB determined that your willful breach of trust was a clear honor code violation, incompatible with commissioned service in the Navy, and recommended your disenrollment from the STA-21 program.

On 20 May 2020, the senior member submitted the PRB report announcing the PRB findings and recommendation. In his comments, the senior member noted the PRB reviewed the PI and the NJP report and found all documentation “to be sound and impartial and also considered your testimony and the testimonies of three witnesses via video teleconference. He further noted the PRB’s determination that you could not provide any verifiable information exonerating yourself. Although the PRB agreed that you ultimately completed all academic requirements for commissioning, the PRB found that you did in fact make a false official statement and that you did fail to turn in a grade report as directed. Accordingly, the PRB unanimously found that you did commit an honor code violation and affirmed the previous decision PRB’s recommendations.

¹⁸ This conclusion was informed by the AO provided by NSTC, dated 17 June 2019. The AO cited to Section 8-9.3. of NSTC M-1533.2, which provides that “only persons who have no involvement with the matters before the [PRB] may be appointed as voting members.” As the PIO had previous involvement with the matters before the PRB, he should not have been appointed as a voting member.

By memorandum dated 28 May 2020, your attorney submitted a letter of deficiency regarding the PRB proceedings of 13 May 2020. This letter of deficiency raised several of the same issues that you have raised to this Board and the [REDACTED]. Specifically, your attorney alleged that NSTC lacked the jurisdiction to conduct a PRB since you had already graduated and sworn to the oath of office; that the PRB President mistakenly identified the Board's decision in Docket No. 3923-18 as the "triggering document" for the PRB; that you were not provided sufficient notice of the alleged offenses; that the PRB applied the wrong legal standard in analyzing the case; that you were not provided all of the evidence considered by the PRB; and that the evidence was legally and factually insufficient to support the PRB findings.

On 30 June 2020, the NROTC Unit [REDACTED] Commanding Officer notified you that he concurred with the PRB's recommendation for disenrollment, and provided you five days to submit a written response to that recommendation. You acknowledged this notice on 1 July 2020, and indicated that you would submit such a response.

By memorandum dated 8 July 2020 addressed to the CNSTC, your attorney complained that the NROTC Unit [REDACTED] commander reached his conclusion referenced in the 30 June 2020 notification referenced above, "without apparent legal review or discussion of our letter of deficiency." He then reiterated the alleged deficiencies noted, and requested that the PRB findings be set aside and that you be appointed as an officer in the Navy.

By memorandum dated 7 August 2020, the NROTC Unit [REDACTED] Commanding Officer addressed your allegations of error from your 28 May 2020 letter of deficiency and 8 July 2020 memorandum to the CNSTC. In response to your assertion that you had already been commissioned upon executing the oath of office, he noted that you had been informed before the commissioning ceremony that your participation did not constitute a commissioning. In response to your claim that the Board's previous decision was not a proper triggering document for the PRB, he noted that the PRB was obviously directed by NSTC in a letter dated 17 June 2019. In response to your complaint that the PRB lacked the specificity necessary to provide you notice of the alleged offenses, he noted that there was no confusion expressed by the PRB members and that you mischaracterized the statement of the senior enlisted leader present. In response to your claim that the PRB applied the wrong legal standard in analyzing the case, he noted that the PRB is not a legal proceeding, but rather an administrative one, and that you received NJP in February 2014 and was afforded the opportunity to rebut those proceedings at the time. In response to your complaint that you were not provided the evidence considered by the PRB, he noted that you received all of the evidence for the first PRB and that there was no new evidence considered. Finally, in response to your claim that the evidence was legally and factually sufficient to support the PRB's findings, he found that you were in fact given a clearly communicated order and that the syllabus you provided was substantially different than the actual course syllabus.

By memorandum dated 22 September 2020, the NROTC Unit [REDACTED] Commanding Officer strongly recommended that you be disenrolled from the program. In support of this recommendation, he stated that, "[a]fter review of all available evidence, including the original NJP, PRB, disenrollment documentation, and after also convening my own PRB to explore [your] actions, it is clear that [you were] in fact guilty of multiple aptitude failures to include willfully

lying.” He also noted that you took no responsibility or accountability for your lying and dishonesty. Of note, this commander was different than the one who recommended your disenrollment in 2014, but he reached the same conclusion based upon his independent review of the evidence.

Your disenrollment was approved by the CNSTC on 20 May 2021 after his consideration of your 28 May 2020 letter of deficiency; your 8 July 2020 response to the NROTC Unit [REDACTED] Commanding Officer’s notification to you that he concurred with the PRB determination; the 7 August 2020 response by the NROTC Unit [REDACTED] commander to your allegations of error; and ultimately the NROTC Unit [REDACTED] commander’s 22 September 2020 disenrollment recommendation.

Procedural Background.

You first sought relief from the Board in October 2014. Specifically, you alleged that you were wrongfully punished under the UCMJ, and that your mental health concerns adversely affected your ability to defend yourself against the charges. This application sought relief focused on your NJP, rather than your PRB and/or disenrollment. On 22 April 2015, the Board found insufficient evidence or any error or injustice warranting relief in Docket No. 12481-14.

In February 2016, you sought reconsideration of the Board’s previous denial of your request for relief in Docket No. 12481-14. You again asserted numerous procedural errors and violations pertaining to your NJP, and by extension your disenrollment from the STA-21 program. This application was supported by a psychological evaluation to document your mental health issues at the time of the NJP. The Board again found insufficient evidence of any error or injustice warranting relief in Docket No. 0850-16.

You again sought relief from the Board in August 2016. Unlike your previous two applications, this application alleged procedural errors in the PRB and disenrollment process. Specifically, as noted above, you objected to the inclusion of the PIO as a voting member of the PRB. You also alleged that your disenrollment relied upon matters of which you were not notified or afforded the opportunity to address; that you were not clearly or effectively advised of your right to secure the assistance of legal counsel for your PRB; that you were not permitted to comment on the NSTC Brief Sheet provided to the CNSTC by the NROTC Unit [REDACTED] commanding officer to support his recommendation; and that a non-voting member of the PRB was permitted to remain in the room for deliberations. As noted above, on 27 June 2019 the Board found the existence of an error warranting relief in that the PIO should not have been appointed as a voting member of the PRB, and therefore directed that a new PRB be convened to reconsider your case in Docket No. 3923-18.¹⁹

As noted above, a new PRB was convened on 13 May 2020, and reached the same conclusion as did the previous PRB. The CNSTC again approved your disenrollment from NROTC and the STA-21 program pursuant to the PRB’s recommendation on 20 May 2021.

¹⁹ The Board notes that this was a specific remedy that you requested, despite your present claim that such relief was invalid.

In June 2021, you again sought relief from the Board, alleging that the very relief you had requested in Docket No. 3923-18 (i.e., a new PRB) could not stand as proper relief for the error identified in that case based upon the federal statute of limitation. In addition to reiterating your previously-made allegations of error in the NJP and the statute of limitations argument mentioned above, you alleged errors in the more recent PRB proceedings, to include allegations that the members applied the incorrect standard for review and that you were denied access to certain documents. You also complained that the commissioning procedures were violated, and added a new allegation that you were targeted for mistreatment as a minority. On 31 March 2022, the Board denied this request for relief in Docket No. 5304-21.

On 20 April 2023, you filed suit in the [REDACTED], alleging that the Board's decision in Docket 5304-21 was erroneous in several regards.

On 7 August 2023, the [REDACTED] remanded your case to Board for issuance of a new written decision. The [REDACTED] specifically directed the Board to consider Document No. 18, in addition to your underlying application for Docket No. 5304-21, as part of its decision making process.

Conclusions.

As a preliminary matter, the Board found that you misstated the issue in controversy in this case. The issue was not your completion of the Calculus II course, as you stated on page 2 of Document No. 18. Rather, the issue was your integrity, or lack thereof. You were not disenrolled from the STA-21 program because you failed to complete the Calculus II course. The Board acknowledges that you ultimately received a "C" in that course from [REDACTED] after the professor upgraded your grade. Rather, you were disenrolled because you lied about the nature of the [REDACTED] online course that you took in the hope that it might satisfy the commissioning criteria that you otherwise failed to satisfy at the time. Specifically, you informed NROTC Unit [REDACTED] personnel that you took the course in a classroom setting with the professor present in the room, and that you took all of the tests in the classroom with the professor. The falsity of this statement was confirmed by the [REDACTED] professor responsible for the course, and you admitted to having lied about it during both your NJP hearing and at the first PRB which followed. The Board believed that your continuing dishonesty about this matter even today, to both it and the [REDACTED], validated the Navy's decision to deny you a commission in 2014.

Your contention that you were entitled to be commissioned as an officer in the Navy upon completion of the STA-21 program is fundamentally wrong. Completion of the STA-21 program did not "entitle" you to a commission, and you were not qualified to receive one. As of the date of the commissioning ceremony, you had not provided the grade memorandum which was used to validate the academic credentials of your peers, and two days later you submitted a degree audit report which reflected that you failed to meet the minimum standard for the Calculus II in a qualifying course. It was not until almost a month later, when you convinced the professor of the [REDACTED] Calculus II course to change that grade to a "C," that you arguably completed the academic requirements for commissioning. However, completion of the academic requirements did not entitle you to a commission. NROTCU [REDACTED] provides that officer candidates "if in all other respects qualified, will be commissioned as an Ensign ... in the Navy..., dependent upon the needs of the Service, and *subject to a review of the recommendation*

of the Professor of Naval Science by the [CNSTC] (emphasis added).” Accordingly, at no time were you ever entitled to a commission. By the time that you arguably became academically eligible to receive a commission, you were under investigation for allegations of misconduct which would ultimately result in NJP and a PRB. Nothing was “withheld” from you on 21 December 2013, because you were not qualified for a commission at that time.

Contrary to your contention, you were not commissioned on 21 December 2013. Your command magnanimously permitted you to participate in the commissioning ceremony, despite the fact that you were not qualified for a commission, to save you the embarrassment of being denied this privilege after your mother arrived in town for the event. This magnanimous act, however, did not constitute the granting of a commission as a Navy officer to someone unqualified for such distinction. Your argument that the requirements of MILPERSMAN 1100-030 and NSTCINST 1533.2C to ensure that all questions regarding a commission are resolved before administering the oath of office indicates that the verbal oath you executed was valid is without merit, because your command took the necessary precautions to ensure that the “oath” you executed was not official. This was made clear to you in writing beforehand, and you were notified that that your recitation of the oath of office would be viewed as ceremonial only. You acknowledged this in writing before executing that oath, meaning that you gave your oath without effect. You cannot now credibly claim that viewed the oath you gave as binding, as you acknowledged that your oath would have no effect at the time. Further, you have never presented or represented yourself as a commissioned officer, so you clearly did not believe it to be valid at the time. Even the program for the 21 December 2013 commissioning ceremony specified that you “expect[ed]” to be commissioned as an Intelligence Officer, rather than stating that you were being so commissioned. Additionally, you have also failed to produce evidence that you signed a NAVPERS 1000/4, documenting your oath of office. This is relevant, as the authorities that you cited in support of your claim to have been properly commissioned reference the need to complete this form to memorialize the appointment. Your contention that “no other NROTC graduates were treated in the same manner” is disingenuous, as all of them presumably signed the NAVPERS 1000/4 documenting their respective oaths, none of them were informed beforehand that their oath would be considered ceremonial only, and there was apparently no question as to their eligibility since you were the only one of the group who failed to submit a grade memorandum to confirm your eligibility. As you were neither commissioned, nor qualified for a commission, on 21 December 2013, there is nothing for the Board to “restore” in this regard.

Even if the Board believed that you should be commissioned as a Navy officer, the relief that you requested in this regard would be beyond the Board’s authority to grant. The appointment of officers in the Navy is a constitutional process, reserved to the President. That authority has been delegated to the Secretary of Defense in the case of appointments to junior officer grades, but has not been delegated further. Additionally, such an appointment is not effective until it is properly tendered to and accepted by the appointee. As you were never qualified for appointment as an Ensign, and your command made it clear in advance that your participation in the commissioning ceremony was not official, you were never properly tendered an appointment as an Ensign. The Board’s authority to correct errors or remove injustices from naval records does not extend to the circumvention of the constitutionally-mandated process to appointment officers in the United

States Navy. Accordingly, the Board could not correct your record to reflect your appointment as a Navy officer even if it believed such relief to be warranted.²⁰

NJP.

There was no error or injustice in the NJP which was administered on 12 February 2014. This represents the fourth separate time that the Board has reviewed this NJP, and on each occasion a different panel of the Board reached the same conclusion.

There were no procedural errors in the NJP administered on 12 February 2014. You were properly notified of the charges against you and informed of all of your rights. On 30 January 2014, you acknowledged those rights and waived them. Included among these rights was the right to demand trial by court-martial. Had you exercised that right, the Government would have been required to prove the charges against you in an adversarial process, governed by the Military Rules of Evidence and Rules for Courts-Martial, beyond a reasonable doubt, but you voluntarily and expressly waived that right and accepted disposition with the relatively less due process protections afforded at NJP. On 12 February 2014, a hearing was conducted at which you had the right to present evidence in your defense. At the conclusion of this hearing, the imposing commander actually dismissed one of the charges, but found you guilty of the other two and imposed reasonable punishment for those offenses. Your claim not to have been informed about your appellate rights until after the five-day window had closed is false, as the NAVPERS 1626/7 documenting your NJP reflects that you signed to acknowledge that right on 12 February 2014. On 18 February 2014, you stated in a hand-written note that you did not intend to exercise your right to appeal the NJP. There certainly is no due process violation in your command extending the window beyond five days for you to decide whether or not to appeal the NJP, and there is no evidence or reason to believe that your decision not to appeal it was coerced. While you went to great lengths in Document No. 18 to characterize the NJP process in the military as one devoid of due process and the involvement of lawyers, you neglected to inform the [REDACTED] that the appeal which you voluntarily waived would necessarily have produced a legal review of the proceedings and the evidence by a relatively senior military lawyer before being acted upon by the appellate authority. You were informed of this fact when you voluntarily elected to waive that right. You also indicated that NJP proceedings typically afford the accused only 48 hours to prepare and respond to charges, but neglected to mention that you were afforded nearly two weeks. There simply was no error or injustice in the NJP proceedings in your case.

Your contention that the evidence that you doctored the syllabus was improperly “sprung” upon you during the NJP hearing in violation of your due process rights is without merit. The record suggests that this evidence arose in the context of responding to your denial of having made the false statement charged. As such, it was presented as rebuttal evidence. The command was entitled to assume that you would be truthful in any comments made during your NJP hearing, so there was no error or injustice in confronting you with evidence when it became apparent that you were not.

²⁰ The Board could theoretically make a recommendation that you be so appointed, but such a recommendation would not be binding and is not warranted.

You have claimed that the PLOR that was administered subject to this NJP failed to include notice of your appellate rights and was procedurally defective, but you have not provided a copy of that PLOR for the Board's review and it does not appear in your official record. This omission avers to your favor, as it appears that adverse material that should appear in your record actually does not, but it also deprives the Board of the opportunity to verify your claims. As such, the presumption of regularity applies to establish that this document, when issued, was appropriate. In any case, it is apparent from the record that you were notified of your right to appeal the NJP, which necessarily included the PLOR, and that you voluntarily waived that right. It is also apparent from the record that this PLOR has caused you no harm, since it is not even filed in your record to have any adverse effect.

The evidence also clearly supports the charges for which you were found guilty at NJP. Again, the presumption of regularity applies to establish this. This presumption applies to the PI which gathered the evidence supporting the charges, and to the finding of guilty made by the imposing commander. You did not take the class in person, as you stated. There was no professor present in the classroom, as you stated, and you did not take exams with the professor present. These facts were confirmed by [REDACTED] professor who you named in the false statement that you made. More importantly, you pled guilty to the violation of Article 107, UCMJ. The Board acknowledges that you currently deny having done so, but found this denial to lack any credibility. You claim that there is "no explanation as to why [you] would admit guilt to a false statement where [you have] evidence demonstrating conclusively that [you] did not make a false statement," but the imposing commander explained that you pled guilty after being confronted with the evidence that you doctored the syllabus provided for the [REDACTED] course and you most certainly do not have conclusive evidence to the contrary. The Board notes that on several occasions you have suggested that it was the doctored syllabus itself which formed the basis for your Article 107, UCMJ violation,²¹ but in fact the evidence was clear that it was your false statement of 2 January 2014 which formed the basis for that charge, and that you were influenced to admit your guilt to that charge only after being confronted with the altered syllabus. The imposing commander reported that you pled guilty to the Article 107, UCMJ, offense, and not guilty to the Article 92, UCMJ, offense, in both the Report of NJP and the justification for his recommendation for your disenrollment. The Board has no reason to question his credibility in this regard, especially since his finding need not have been bolstered by your plea. The day after you were found guilty at NJP, you prepared a letter to the members of the PRB. The first 10 words of this letter were "I am guilty of lying and not following an order." You then proceeded to admit, and attempt to explain your actions, to the PRB members multiple times during the hearing. Specifically, you attributed your dishonesty to your mental health condition at the time, despite the fact that there is no logical nexus between the anxiety and depression that you described and dishonesty. Accordingly, even if there were some reason to question the sufficiency of the evidence upon which your commander based his finding of guilt during the NJP

²¹ The Board acknowledges that the PRB found that you violated the honor code with regard to the doctored syllabus. The PRB, however, is a separate proceeding from the NJP, and having been placed on notice that you were to defend against an alleged honor code violation regarding the circumstances of the [REDACTED] Calculus course, their finding of an honor code violation in this regard is not an error. Your alternation of the syllabus to remove references to the on-line nature of the course was one of several honor code violations that this Board would have substantiated based on the evidence.

proceedings, you immediately removed all doubt by putting your admission to the misconduct which you now deny into writing.

The Board found your contention that you did not know that the [REDACTED] course would not satisfy the NROTC requirements to be disingenuous. First, your actions to hide the [REDACTED] class from NROTC Unit [REDACTED] personnel until the last possible minute were highly suspicious and suggested an intent to deceive. More significantly, in your letter to the Board requesting reconsideration of the Board's decision in Docket No. 12481-14, dated 15 January 2016, you stated that you "knew that an 'in-class' version of the course was needed to satisfy the STA-21 requirement." In this regard, the Board did not find your claim that you honestly believed that the [REDACTED] course was considered to be in-person to be credible. First, you exaggerated the evidence supporting this claim. For example, you stated on page 4 of Document No. 18 that you were "informed prior to taking the course that it was considered in person if [you] showed up on campus and took the course in the campus computer lab." In support of this claim, you cited to a letter, dated 10 February 2014, from a Student Services Representative (Document No. 9-3, page 175). Review of this letter, however, reveals that this Student Services Representative specifically informed you that this was an online class, and that you were aware of that fact in October 2013. You also claimed that you had the approval of your faculty advisor and two other [REDACTED] professors to take this course, but review of the letter you cited in support of this claim (Document No. 10-1, page 84) reflects only that a faculty advisor, not your faculty advisor, had reviewed the course, and that it did not support your claim that that individual and the two other [REDACTED] professors "approved" this course. Rather, the letter was written to express support for you in the PRB process, and not to establish that the [REDACTED] course was appropriate.²² Your mischaracterization and exaggeration of the relevance of this evidence did not enhance your credibility with the Board in this case where your credibility was of paramount importance. The Board also noted that you did not disclose that you had taken this course before the commissioning ceremony to NROTC Unit [REDACTED] personnel, and only revealed your completion of it after learning that you had failed to achieve the minimum score for the [REDACTED] Calculus II course. The circumstances of this timing were suspicious, as you subsequently provided a letter dated 16 December 2013 indicating that [REDACTED] had accepted the [REDACTED] course for credit. As the Calculus II course was the only one that you could not confirm prior to the commissioning ceremony, the obvious conclusion to be reached from your failure to disclose this course is that you knew that it would not satisfy the commissioning requirements and that you disclosed it only after your low [REDACTED] course grade left you with no other choice. Finally, the Board simply did not find your explanation to be believable. Your explanation that you took the [REDACTED] course to "hedge your risk" against a professor known to be a difficult grader simply does not make any sense. If you truly believed that the [REDACTED] course would satisfy the NROTC requirements, you would not have bothered to take the more difficult [REDACTED] course. You are clearly an intelligent person. As such, the Board did not find credible your claim to have honestly believed that the remote [REDACTED] course taken under the circumstances that you took it would be considered to be an "in person" class. No reasonably intelligent person would reach such a conclusion under the circumstances. The Board found that the evidence clearly reflected your awareness that the [REDACTED] course would not satisfy the NROTC requirements, and that you lied about

²² The opinion of these [REDACTED] professors regarding whether the [REDACTED] course was "appropriate" would be irrelevant regardless, as they were not authorities on or familiar with NROTC requirements.

the nature of this course after discovering that your [REDACTED] course grade was not sufficient in the hope of obtaining your commission.

The Board also found that the evidence was sufficient to support your finding of guilt to the charge of disobeying an order in violation of Article 92, UCMJ. Again, the presumption of regularity applies to this determination. The commander who imposed NJP believed that the evidence supported this charge, as did both of the PRBs which reviewed your case. They either did not find your claim not to have received the e-mail directing you to provide the grade memorandum to be credible, or they relied upon the fact that you continued not to provide the grade memorandum after being verbally instructed to do so on 16 December 2013. Either conclusion would be reasonable and supported by the evidence. While you did not admit to this misconduct during the NJP hearing, you did the following day in writing. Again, the first 10 words of the letter which you wrote to the members of the PRB on 13 February 2014 were, "*I am guilty of lying and not following an order (emphasis added).*" The only order to which this statement could have applied was the one for which you had received NJP and which was pending review by the PRB. Accordingly, even if there were any doubt about your knowledge of this order on 12 February 2014, you removed all doubt with this letter on 13 February 2014. The Board noted that although you denied having received the e-mail instructing you to provide the grade memorandum, you responded to the instruction contained within the same e-mail to schedule a counseling session with your OI. As such, the Board found it likely that you did, in fact, receive the e-mail with the instruction, but decided not to comply because doing so would risk revealing that you were not going to achieve the minimum score for the [REDACTED] Calculus II course. The suspicious circumstances surrounding the revelation of the [REDACTED] course results discussed above contributed to the Board's doubts regarding your claim in this regard. The Board did not find convincing the evidence that you provided that Yahoo had acknowledged a "synchronization problem" between your account and the server's database, as the evidence reflects that you sent and received e-mails to/from that account both before and after the e-mail in question. Even if you did not receive the e-mail, however, you still failed to provide the grade memorandum as instructed. You claim to have first become aware of the requirement when you met with your officer instructor on 16 December 2013, and that it was impossible to complete it because the [REDACTED] U staff was off due to winter break. However, you had completed the [REDACTED] course in October 2013 and you obtained a letter dated 16 December 2013 from [REDACTED] indicating that the course had been accepted for transfer. If you truly believed that the [REDACTED] course would have satisfied the NROTC commissioning requirements, as you claim, there would have been no reason not to rely upon this grade in completing your grade memorandum. As such, you did, in fact, fail to obey the order to provide the grade memorandum, as was determined at NJP.

The Board was not persuaded by your claims during the most recent PRB that you admitted to your misconduct under duress. This claim is belied by the fact that you felt at ease to continue denying the violation of Article 92, UCMJ, at your NJP hearing, even after pleading guilty to the Article 107, UCMJ, claim. It is also belied by the fact that you wrote a voluntary and unnecessary letter to the members of the PRB on the day after your NJP hearing admitting to your guilt, before the members even convened. You were not compelled to say anything at the PRB hearing, much less beforehand, but you elected to admit your guilt, presumably in the hope of currying favor with the members. The Board was also not persuaded that you felt obligated to accept NJP for fear of the consequences of a court-martial. As you know, that is the choice faced

by all service members who receive NJP. Your decision to accept NJP spared you the potentially more severe consequences that could have come from a court-martial conviction, as the Board had no doubt regarding your guilt to the offenses charged. Any jeopardy to your career that existed at the time was due to your own actions. As such, your claim that your self-incriminating statements were made under duress was not convincing.

PRB.

The Board found no error or injustice in the conduct of the PRB on 13 May 2020. Your contentions of errors in the process and/or substance of this hearing were not supported by the evidence.

The Board notes that you did not reiterate your argument that the Board erred in granting your previously made request to convene a new PRB based upon the five-year statute of limitations established by 28 U.S.C. § 2462 in Document No. 18. The Board continues to find that this contention has no merit. A PRB is not an “action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise.” It is also not a disciplinary proceeding; your disciplinary proceeding occurred on 12 February 2014 during the NJP hearing. According to NSTC M-1533.2C, the PRB is “an administrative tool available to the [Professor of Naval Science] to investigate, review, and document recommendations regarding the best course of action to be taken to ensure successful fulfillment of program requirements by students enrolled in any NSTC officer development program.” It produces recommendations only, none of which involve enforcement of a civil fine, penalty, or forfeiture. Indeed, neither the 2014 nor 2020 PRB recommendations resulted in a civil fine, penalty, or forfeiture; rather, they both resulted in recommendations against granting you the commission to which you were never entitled. The Board granted your specific request for a new PRB in Docket No. 3923-18 in order to remove any doubt regarding the sufficiency of the due process you received in your disenrollment process. Any such doubt has now been eliminated, as a properly constituted PRB reached the same result in 2020 as was reached by the previous PRB in 2014.²³

The Board found insufficient evidence to conclude that the more recent PRB directed by the Board in Docket No. 3923-18 applied the wrong legal standard for review. First, the language that you cited from the PRB President did not, as you claim, establish that the PRB gave any deference to the finding of the first PRB. To the contrary, the senior member specifically stated that they were to “take another *clean look* at this, to make sure there was no bias in the case (*emphasis added*).” Further, the senior member stated that he had “heard nothing that compels [him] to overturn ... [t]he actions of the ... PMS at the time and the other lieutenants that were here.” This was not a reference to the previous PRB; neither the PMS nor “the other lieutenants” were involved in the previous PRB. This was likely a reference to the PI and the resulting NJP and disenrollment. Apart from a preliminary discussion of the procedural history of your case, the previous PRB was not mentioned in the more recent PRB’s transcript. It certainly was not used as a basis for the PRB’s findings. Careful review of the transcript for this PRB reveals that the senior member made the comments that you complain about (i.e., the references to

²³ The Board notes that in granting you a new PRB based upon the faulty composition of the original PRB in Docket No. 3923-18, it incidentally addressed your other contentions of error in the 2014 disenrollment process.

“overturning” the previous actions) in the context of a dialogue with you regarding the sufficiency of the evidence that you had presented to make your case to that point in the proceedings. Specifically, he was communicating to you that you had not offered the PRB much reason to find in your favor to that point in the proceedings after highlighting all of the evidence which pointed toward the conclusion that you lied. He could have been more precise in the language that he used, but since he was presumably not a lawyer and was operating under the unusual circumstances of a PRB conducted long after the respondent had already been long disenrolled, the Board was not convinced that his imprecise word choice evidenced application of the wrong standard of review. The Board was not convinced that the PRB’s “affirmation” of your previous disenrollment proceedings evidenced the improper standard of review. Rather, the PRB’s use of the word “affirm” in this context makes far more sense as a statement of agreement with the previous decisions made, rather than as evidence of the improper standard of review. More importantly, the transcript reflects that the 2020 PRB did actually provide a *de novo* review of your case. There is no evidence of deference to the original PRB in the transcript. It appears that the PRB went through all of the original evidence and permitted you to present your defense without limitations. The PRB’s conclusions were obviously based on that evidence, and not on the previous PRB’s findings. The Board did not find the PRB’s findings to be surprising given the weight of the evidence against you and the relative credibility and weakness of your defense. Further, the senior member described what the PRB considered in the PRB report. Specifically, he stated that the PRB reviewed several documents related to the circumstances of your previous disenrollment in 2014, including “the Preliminary Inquiry and the NJP *reports that preceded the ultimate PRB recommendation* and subsequent decision to disenroll [you] for aptitude failure (lying) (*emphasis added*).” These are precisely the documents that the PRB should have considered, and they did not include the previous PRB itself. He also noted that while you provided good character witnesses testimony, none of those witnesses had any direct knowledge of the circumstances of your actions which resulted in NJP or the original PRB. Finally, he noted that you failed to provide any verifiable information exonerating you for your original aptitude failures. This was clearly commentary upon your inability to refute findings of guilt during NJP, and not a suggestion that you could not “overcome” the previous PRB’s findings. The latter findings were referenced nowhere in the record as a basis for the new PRB’s findings.

The Board found insufficient evidence to support your contention that you did not receive the evidence considered by the PRB. The transcript reflects that considerable time and discussion was devoted to ensuring that you had all of the relevant documentation considered by the PRB. At the 4:28 mark in the transcript, the Recorder stated the evidence being presented to the PRB, and referenced your acknowledgment of receipt of these materials. At the 10:31 mark, the senior member indicated his willingness to go through the documents to ensure that you had everything, and at the 11:42 mark you confirmed that you had copies of the documents about which you had expressed confusion. Nothing from this recorded discussion reflects that you did not have all of the documents considered by the PRB. Finally, this is now your fourth application to this Board, and you have filed suit in Federal court. As such, your claim to have received inadequate notice of the subject matter of the PRB rings hollow. The Board also noted that you exaggerated the evidence to make your case that there was confusion during the PRB hearing. Specifically, on page 6 of Document No. 18 you stated that the senior enlisted member present could be heard indicating that he was “overwhelmed trying to understand the case.” In fact, the senior enlisted member merely stated “I’m pretty fatigued” in response to an inquiry regarding his thoughts on

the case after hours of testimony. This statement did not reflect or logically imply that he was “overwhelmed trying to understand the evidence, as you claimed. As with your other exaggerations of the evidence discussed previously, this mischaracterization did not enhance your credibility with the Board.

For the same reasons that the Board found no error in the findings of guilt at your NJP, the Board also found no error in the findings of your more recent PRB. Despite your insistence to the contrary, the evidence was more than sufficient to establish that you violated Articles 92 and 107, UCMJ. As such, it was more than sufficient to sustain an honor code violation of sufficient severity as to justify your disenrollment from the NROTC program and disqualification for a commission. The Board found no credibility in your denials in this regard, as you have previously admitted to the misconduct, the evidence would support the charges even in the absence of your admissions, and you have repeatedly demonstrated no hesitancy to say whatever you believe necessary to achieve your desired ends. Your integrity is obviously in doubt, which made the recommendation and ultimate decision to deny you a commission as a Navy officer entirely necessary and appropriate.

Finally, the Board found no merit in your contention that you were “targeted” for mistreatment. Contrary to your claims, the evidence does not support even a single instance of mistreatment. The error that the Board identified in Docket No. 3923-18 was clearly unintentional and not malicious. In fact, the evidence reflects that you were treated more than fairly and provided multiple opportunities to earn a commission even after your conduct raised reasonable doubts regarding your qualifications. Even after the first PRB in 2013 recommended your disenrollment for aptitude failures, you were permitted to continue in the program and to take a bare minimum number of credits during the Fall 2013 semester to attempt to attain the minimum academic requirements. The CNSTC disapproved that PRB’s recommendation, and even granted you a medical waiver to permit your appointment with a previously unidentified color-blindness condition. When your qualification for a commission could not be verified by 21 December 2013 due to your own failures, your chain of command magnanimously allowed you to participate in the commissioning ceremony so that you would not be embarrassed and your mother’s trip would not have been wasted. These actions tend to negate your claim to have been singled out for mistreatment, as they reflect that you were granted opportunities and concessions that need not have been granted. The only reason that you were “singled out” from your peers not to be actually commissioned on 21 December 2013 was because you were the only one of your peers who had not complied with order to provide a grade memorandum and whose qualifications to be commissioned had therefore not yet been confirmed. The only reason that you were “singled out” for NJP and the subsequent PRB which resulted in your disenrollment was because you were apparently the only officer candidate who made a false statement in an attempt to deceive NROTC Unit [REDACTED] personnel that he actually satisfied the commissioning requirements. If you had not blatantly lied in an effort to obtain the commission for which you were not qualified, the chances are that you would have been tendered such a commission once the discrepancy with your [REDACTED] Calculus II grade was resolved and you became so qualified. Unfortunately, your own actions denied you that opportunity. In the end, the only adverse consequence that you have actually suffered as a result of your blatant violations of Articles 92 and 107, UCMJ, was the receipt of a PLOR which is not even currently included in your naval record. You cannot lose something for which you never entitled to

receive, so you did not “lose” a commission. The adjudged loss of rank from your NJP was suspended and never executed, so you did not suffer that earned consequence of your misconduct. Rather, you returned to the Fleet without losing any rank, and were permitted to complete your obligated service with no adverse consequences. You were not even required to repay the costs expended by the Navy for your education through the STA-21 program, which means that you received a free education without being required to perform the service as a commissioned officer that the Navy bargained for. The absence of virtually any adverse consequences for such egregious misconduct belies your claim to have been “targeted” for mistreatment. Virtually any other Sailor would have rightfully suffered far worse consequences for such conduct than you did. As such, the Board found no evidence to support your claim of being so “targeted” for mistreatment for any reason, much less because of your minority status.

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,

11/20/2023

