



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

FC
Docket No: 08884-02
8 September 2003

[REDACTED]

[REDACTED]

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

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 September 2003. 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, and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by Marine Corps Recruiting Command dated 17 June 2003, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps Reserve on 25 August 1998 and were enrolled in for a three-year Naval Reserve Officer Training Corps (NROTC) program at the Virginia Military Institute (VMI). On 25 September 1998 you were counseled about failing the physical fitness test and oversleeping. On 22 October 1998 you were again counseled about your failure to send a thank-you note to the registrar's office.

On 26 February 2000 you were granted a medical leave of absence for stress fractures of the leg. On 20 June 2000 you were again counseled about poor personal appearance. On 23 August 2000 you were notified about your aptitude for continuation. On 17 October 2000 you were counseled about your marginal grade point average and your inability to pass the physical readiness test.

On 14 November 2000 you were granted a furlough for the Thanksgiving holiday. On 15 November 2000 you were arrested and charged with possession of illegal drugs after the house in which you were staying was raided by local police and agents of the Drug Enforcement Administration. On 6 December 2000 you notified the NROTC unit that legal action was pending, and were advised to keep the chain of command informed about developments in the case. On that same day, you were notified of a leave of absence due to aptitude, and elected not to appear before a performance review board. On 31 January 2001 the commanding officer requested that you be removed from the medical leave of absence. On that same day, you were notified that you had been placed on interim leave of absence. You then submitted your resignation from VMI.

On 6 February 2001 the Bureau of Medicine and Surgery (BUMED) recommended that you be removed from the medical leave of absence. On 9 February 2001 the performance review board unanimously recommended disenrollment because of a lack of aptitude. On 12 February 2001 the Chief of Naval Education and Training (CNET) granted a waiver to remove you from the medical leave of absence.

On 13 February 2001 you were notified that the State of Maryland did not attend to prosecute you for the charges of drug possession. On that same day, the commanding officer notified you of the results of the performance review board. On 28 March 2001 you signed a disenrollment form requesting recoupment of \$27,959.00 in scholarship funds instead of being ordered to active enlisted service. On 6 April 2001 the commanding officer recommended disenrollment from the NROTC program. On 22 May 2001 Headquarters Marine Corps approved your disenrollment and directed recoupment of \$27,959.00. On 28 June 2001 you received an entry-level separation from the Marine Corps Reserve.

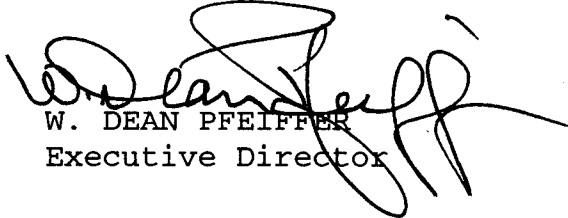
It its review of your case, the Board carefully weighed all potentially mitigating factors such as the non prosecution of drug possession charges against you and your medical condition. However, the Board found these factors were not sufficient to warrant a waiver of recoupment given your marginal performance, and especially your resignation from VMI. In this regard, The Board believed that you must have been contesting the charge against you in civil court given the favorable outcome of the case. Therefore the Board could not understand why you did not attempt to stay in the NROTC program and remain at VMI, at least until the civil charges were disposed of. Had you done so, you

might well have been retained. However, given your decision to leave the NROTC program and VMI, the Board concluded that recoupment was appropriate. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously 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,



W. DEAN PFEIFFER
Executive Director

Enclosure



UNITED STATES MARINE CORPS
MARINE CORPS RECRUITING COMMAND
3280 RUSSELL ROAD
QUANTICO VA 22134-5103

IN REPLY REFER TO:
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MCRC (ON)
17 Jun 03

Memorandum for the Executive Director, Board for Correction of Naval
Records

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

Ref: (a) CNETINST 1533.12G, Chapter III, Article 314

1. This is to provide advisory opinion for the subject named petitioner.
2. On August 25, 1998, [REDACTED] was awarded a Three Year Chief of Naval Education and Training (CNET) Controlled Scholarship at the Naval Reserve Officer Training Corps (NROTC) Unit, Virginia Military Institute.
3. Before Maryland entered a Nolle Prosequi regarding [REDACTED] case on February 13, 2001, his performance in the NROTC program was marginal. Due to bilateral tibial stress fractures, [REDACTED] was notified and placed on medical leave of absence (MLOA) until considered physically qualified or disenrolled. On August 23, 2000, Mr. Burleson was notified and placed on aptitude warning in the NROTC program until the beginning of the spring semester, academic year 2000-2001 due to his continued marginal performance.
4. On December 6, 2000, [REDACTED] notified the NROTC Unit of his pending legal action. At that time, [REDACTED] was notified and placed on aptitude leave of absence pending the Unit's review of [REDACTED] situation. January 31, 2001, [REDACTED] was notified and placed on interim leave of absence pending the outcome of a Performance Review Board scheduled for February 8, 2001. [REDACTED] acknowledged receipt of notification and his options; however, declined to appear before the board. Subsequently, Mr. [REDACTED] voluntarily resigned from the institute January 31, 2001.
5. In view of [REDACTED] resignation, and in accordance with the reference, the NROTC Unit requested that [REDACTED] be administratively removed from MLOA effective January 31, 2001 in order to expedite the process of his disenrollment from the NROTC program. On February 6, 2001, the Chief, Bureau of Medicine and Surgery recommended a waiver for the bilateral tibial stress fractures, and removal from MLOA. February 12, 2001, CNET granted waiver. Based on [REDACTED] resignation, and the recommendation of the Performance Review Board, [REDACTED] was processed for disenrollment pursuant to the reference.
6. We regret that a more favorable response cannot be provided. Point of contact regarding this matter is Captain [REDACTED] at DSN 278-9446/7 or commercial 703 784-9446/7.

[REDACTED]
By direction