



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

██████████  
Docket No. 4369-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 22 August 2024. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies. In addition, the Board considered the Naval Service Training Command (NSTC) Advisory Opinion (AO) contained in memorandum 5863/Ser N00/4699 of 1 July 2024 and your 10 July 2024 response stating you did not have additional evidence.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board noted you requested an indebtedness waiver<sup>1</sup> from this Board in 2019 and have again requested to change your record to waive recoupment of scholarship funds due to your disenrollment from the Naval Reserve Officer Training Corps (NROTC) for disciplinary reasons.

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<sup>1</sup> On 5 January 2021, a three-member panel of the Board considered your request and denied your requested relief. The Board strongly agreed with the statement made by the Regimental Honor Committee that, as a senior in the ██████████ Corps of Cadets, “you should clearly by now have a complete and robust understanding of the expectations of all cadets for acting truthfully and with integrity...” The Board also determined the convening of the PRB in response to your violation of the Honor Code was appropriate and in accordance with the governing requirements in NSTC M-1533.2C. The Board further determined there was insufficient evidence of a material error or injustice in the PRB process and concluded recoupment was appropriate, especially in light of the fact you could have opted to fulfill your debt through active enlisted service but declined to do so.

The Board noted the overwhelming majority of the evidence presented in your current petition is the same evidence available to the Performance Review Board (PRB) and the Board that considered your previous case but your contentions differ from those previously raised<sup>2</sup>. In your current submission, you contend, through new counsel, the following:

Two lawfully constituted NROTC tribunals concluded NJP was adequate discipline and an agreement to that effect was signed. Thereafter, a PRB was convened on the basis of the same facts, relying on the overstatement and exaggeration of the seriousness of the events in the plea agreement and determined that the dismissal, loss of commission, and repayment of scholarship funds was warranted. This decision, by the PRB and with Navy concurrence, lacked fundamental fairness, was contradictory, arbitrary and capricious, and failed to observe applicable published NROTC and constitutional due process standards.

The Honor Court and the PRB were both State Action for purposes of the 14<sup>th</sup> Amendment.

Without required notice and a formal hearing, the Honor Court issued a plea agreement which you were led to believe would “end the matter.” You admitted to the acts “as they occurred”, as evidenced by the PRB Record of Proceedings and your testimony, and also admitted “to what this conduct amounted to as described in the Regulations for Officer Development.” You further contend the second aspect of the plea agreement – admitting to the nature of the infraction – was done to secure an end to the matter. Assuming you were told that if you signed the plea agreement that would end the matter, if that inducement was not correct, the admissions in the plea agreement, both of fact and seriousness, would be invalid and inadmissible as evidence in the subsequent PRB.

There is no evidence to support the additional absences or prior counseling alleged by ██████████ (retired), Deputy Commandant, ██████████ Corps of Cadets (██████████).

The exaggeration of the offenses and much of the effort to treat your actions as far more serious than deserved is believed to largely be the result of ██████████ efforts to remove you from competition with his son, a NROTC Cadet also in his senior year, for one of the limited post-graduate SEAL training slots.

The PRB proceeding is double jeopardy and contrary to cadet rules. Specifically, the ██████████ regulations state a PRB is not required if any Honor Court has been held. Further, the regulations state a PRB is for major offenses whereas missing formation, defined as a minor offense, is appropriate for disposition by an Honor Court. Lastly, you contend the

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<sup>2</sup> In 9004-19, you asserted, through counsel, that the PRB was not properly initiated because there was no triggering document. Additionally, you argued ██████████ was clearly biased against you, had a conflict of interest, and refused to recuse himself resulting in his unjust influence on the PRB against you and improper inclusion of his memorandum for the record. Further, you argued that comments made by ██████████, the Company Advisor, called into question the legitimacy of the PRB. Lastly, you asserted that significant weight should be given to the mitigating and extenuating circumstances, including your character and military service.

regulations state that when an Honor Court completely resolves a case via NJP, there are to be no further proceedings.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, adopted the findings listed in the 9004-19 Decision Document, with the following additions:

On 15 September 2015, you signed a Navy enlistment contract and the NROTC Scholarship contract.

On March of 2017, you received two Academic Warnings for unapproved changes of major.

On 24 January 2018, per your testimony at the PRB, you were called into ██████████ office after having missed the Naval Special Preparatory Team (NSPT)<sup>3</sup> the week prior.

On 24 April 2018, ██████████ imposed NJP for violation of Article 4 (Absence without leave), Article 5 (Missing movement), Article 9 (Failure to obey order/regulations) and Article 25 (Conduct unbecoming a cadet, officer, and a gentleman). You pleaded guilty to and were found guilty of each of the offenses. ██████████ imposed sanctions in the form of a verbal reprimand and seven days dorm restriction.

On 25 April 2018, the ██████████ Regimental Honor Committee convened to adjudicate your violation of the Cadet Honor Code, to wit, lying to your chain of command about physical accountability. You pled responsible and demonstrated genuine remorse for your actions. After weighing the evidence and your testimony, the ██████████ Deputy Commandant of Cadets (Honor Advisor), ██████████, found you responsible for the Honor Code violation and imposed sanctions in the form of honor education with the Vice Chief of Education, reduction in rank to Cadet Private for remainder of the spring 2018 semester, removal from all ██████████ organization billets, and two weekends of dorm restriction.

On 3 May 2018, Commanding Officer (CO), NROTC Unit, ██████████ ██████████, notified you that a PRB would be convened 10 May 2018<sup>4</sup>.

On 8 May 2018, ██████████ prepared a memorandum for the record (MFR) noting he had officially counseled you on three different occasions – 1 December, 2 February 2018, and 23 April 2018. He detailed that he discussed your “poor performance at mandatory

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<sup>3</sup> NSPT was a voluntary program to prepare individuals for SEAL training. Per counsel’s brief, the NSPT met for land physical training (PT) before ██████████ formation from Monday to Thursday and pool PT on Friday mornings. Since the pool schedule conflicted with regular ██████████ Friday morning formation, a standing excused absence from ██████████ formations was given to participating cadets for the 2017-2018 academic year.

<sup>4</sup> On 9 May 2018, a second notification was provided to you for a 17 May 2018 PRB. However, on the same day, you waived your right to a five-day period and accepted a shorter period to review the documentation in order to avoid rescheduling and ensure witnesses would remain on campus prior to commencement of summer break. Therefore the 17 May 2018 PRB was subsequently cancelled.

physical training, [your] lack of leadership and focus, and more importantly [your] misconduct violating ██████████ regulations and the ██████████ Honor Code.” ██████████ further stated your actions, which were not in keeping with the values of the ██████████ and the U.S. Navy, jeopardized the trust he and the NSPT program enjoyed with the ██████████ and U.S. Navy.

On 9 May 2018, you submitted rebuttal and matters in extenuation, mitigation, and explanation. Specifically, you requested the CO consider the disposition of your plea for the honor issue as a “legal finality and provide it reciprocal recognition considering the outcome” and the needless accumulation of allegations and offenses.

On 10 May 2018, a PRB recommended, by a vote of 2 to 1, that you be placed on leave of absence pending disenrollment due to your multiple recurring aptitude issues and lack of trust and voted 3 to 0 in favor of active enlisted service. By memorandum of 17 May 2018, the PRB Senior Board Member provided a PRB Report to CO, NROTC Unit, ██████████. In his PRB Report, the Senior Board Member noted your academic history, disciplinary problems, professional performance history, and its determinations, which included detailed discussion of the PRB, the presented evidence, and your testimony, to include noting when you were vague, seemed to be hiding something, finally admitted something, and/or did not give clear answers.

In your 25 May 2018 response to the PRB report, you “fully admit[ted] and [took] responsibility for [your] mistakes.” Additionally, you requested the NROTC CO base his decision on the “totality of [your] person and record” and “[your] history of high performance, military aptitude, [and] sacrifices made to prepare for [your] chosen profession” rather than make a decision “solely grounded on [your] mistakes.”

By memorandum of 30 May 2018, CO, NROTC, ██████████, concurred with the PRB and recommended disenrollment from the NROTC program. In his PRB recommendation, the CO also added findings, to include the following: you admitted to being counselled earlier in the year but did not change your behavior until formally punished, you neglected to inform your Navy chain of command about your Corps sanctions and only revealed you stayed out of your room overnight without a pass during testimony at the PRB, and you demonstrated a lack of aptitude for being a Naval officer by your inability to be forthright. Most concerning to the CO was the information you divulged during a 25 May 2018 meeting with him. During that meeting, you clearly stated you missed both NSPT and Corps formations on most Fridays this year -- but refused to tell the CO why – which was in direct conflict with the statement you made to the PRB that you “may have missed only one or two other sessions, besides those you were punished for, due to academics.” The CO noted your “lack of honesty and clarity in your testimony during the board, and the fact that while you provided some additional insight to [him] but further refused to be forthright with [him], [led him] to question your adherence to Navy Core Values and further demonstrates a lack of aptitude to be a Naval officer.”

You acknowledged the CO's Recommendation on 30 May 2018 and indicated your desire to submit a written response but did not provide rebuttal and matters in extenuation, mitigation, and explanation until 13 June 2018. By memorandum prepared by your counsel, you argued the CO's recommendations and "purported factual findings were not adjudicated by members of a neutral and detached board" so "all adverse inferences from his subjective opinions should be disregarded as unsubstantiated conjecture." You further contend the case demonstrated "a vindictive prosecution and lack of appropriate reasoned temperament and a rush to judgment evidencing concerning toxic leadership style in lieu of appropriate human compassion and basic decency." You further requested that the "unscrupulous treatment to [you] desist and that [you] be allowed a release from [your] contractual obligation" because you no longer wanted to be a part of "an organization that allows such abusive toxic leadership engaged in maltreatment of subordinates to try and ruin young lives..." Additionally, you contend the PRB was "not neutral and detached but instead consisted of biased officers tainted by undue influence with the admission of an inappropriate incoherent factually inaccurate letter from a retired ██████████] who abused his outside influence to corruptly taint the proceedings after learning [you] retained counsel to defend [yourself]." Counsel also took aim at the Company Recorder, contending he told you, before the PRB, that he intended "to promote commissioning" which was a "fraudulent inducement designed to get [you] to make potential untrue admissions against [your] interests, which resulted in confusion of the issues and further allegations that [you] lacked candor" when you were "being unethically trapped through misconstruing words by everyone involved in [your] leadership."

On 3 August 2018, CO, NROTC, ██████████, submitted his Disenrollment Recommendation to Director, Officer Development. The CO assessed that you were "not fit to serve as an officer in the United States Navy at this time due to questionable character issues regarding [your] integrity" and recommended you for service in the enlisted ranks.

On 15 August 2018, CO, NROTC, ██████████, submitted the NROTC Student Disenrollment Report to Commander, NSTC (CNSTC) via Director, Officer Development. The Professor of Naval Science (PNS) recommended Attrition Code "97C3 Recoupment – Inaptitude/Unsuitable." Although provided an opportunity to "request waiver of financial reimbursement and/or involuntary active enlisted service [AES]," you failed to sign a copy of the NSTC Form 1533/122 despite signing for the FEDEX delivery on 20 July 2018. On 22 August 2018, the NROTC CO clarified that he recommended you "be subject to recoupment of any tuition paid by the U.S. Navy on [your] behalf" and further recommended that you be allowed to discharge that obligation through enlisted service.

By memorandum of 10 September 2018, Deputy Commander for NROTC Operations concurred with the PNS's recommendation for disenrollment with monetary recoupment of scholarship funds in the amount of \$41,085.50.

On 14 November 2018, CNSTC recommended to the Secretary of the Navy that you be disenrolled from NROTC, ██████████, for disciplinary reasons. CNSTC further recommended termination of your appointment as a midshipman and recoupment of your \$41,085.50 in scholarship funds.

On 30 November 2018, Deputy Assistant Secretary of the Navy (Military Manpower and Personnel) (DASN (MMP)) approved CNSTC's recommendation on behalf of the Secretary of the Navy.

As a matter of procedure and equity, your petition was submitted to CNSTC to provide an AO. In response, CNSTC recommended denial of your request due to lack of evidence to support your assertion it is unjust to require you to repay educational benefits. Further, CNSTC addressed your assertions and provided the following explanations for the Board's consideration:

██████████ is a ██████████ run program with no oversight by the NROTC Unit nor NSTC. The assertion ██████████ performed a "state action" is unfounded.

Counsel attempts to attach criminal procedure requirements to a clearly administrative process. Even if the plea agreement with the Honor Court was not admissible, as alleged by counsel, the PRB could still consider your absences. Further, during the PRB, you were represented by counsel who allowed you to answer questions about the conduct underlying the plea agreement.

In addressing your contention that you were misled into signing the plea agreement, the AO stated the NROTC Unit has no oversight of the ██████████ program, and any conduct on behalf of the ██████████ can only be attributed to the ██████████ not the NROTC Unit.

PRB proceedings are wholly administrative and not punitive in nature; therefore, the doctrine of double jeopardy does not attach.

Your disenrollment characterization and ordered recoupment were in accordance with established rules and regulations.

The CNSTC AO was submitted to you on 1 July 2024 and, although you were afforded an opportunity to submit a rebuttal or additional evidence, you declined to do so.

After careful review of the new evidence, the Board again determined there was insufficient evidence of an error or injustice warranting your requested relief. The Board substantially concurred with the NSTC AO and determined the PRB and disenrollment processes followed the NSTC established guidelines. The Board, substantially concurring with the AO's discussion that ██████████ is a ██████████ run program with no oversight by the NROTC Unit nor NSTC, determined the actions, to include the plea agreement, taken by the ██████████ were separate and distinct from the PRB convened by the NROTC Unit. The Board concluded it was not error or unjust for the PRB to recommend, and the Navy to approve, disenrollment when the underlying misconduct, adjudicated by a ██████████ NJP and Honor Court, did not result in disenrollment from the ██████████. Additionally, the Board noted several of your contentions – to include ██████████

MFR, exaggeration of the offenses, bias and conflict of interest -- have been repeatedly considered by the PRB, the NROTC CO, CNSTC, the DASN (MMP), and a previous Board. The Board determined the minimal new evidence and new contentions of your current submission failed to overcome the presumption of regularity that has attached to those decisions. Based on the available evidence and relying on the AO, the Board concluded there was insufficient evidence demonstrating a material error or injustice warranting cancellation or waiver of the recoupment of your indebtedness. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

9/11/2024

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Executive Director

Signed by: █