



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

█
Docket No: 7013-21
Ref: Signature Date



Dear █

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

A three-member panel of the Board, sitting in executive session, considered your application on 29 April 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the 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. The Board also considered the 2 March 2022 advisory opinion (AO) furnished by the Office of Legal Counsel (PERS-00J) and your rebuttal to the AO of 9 April 2022.

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

In March 2017, you were attached to F/A-18 Fleet Replacement Squadron █. In April 2018, an incident occurred, an in-flight engagement after a late wave-off call, in which you contend that you took appropriate action for the waive-off but your command believed the flight data contradicted that account. The incident resulted in a scheduled Field Naval Aviator Evaluation Board (FNAEB). Your account of the incident proved to be correct when it was discovered that the contradictory flight data was erroneously pulled from the wrong aircraft; consequently, the FNAEB was cancelled.

In August 2018, you then transferred to Strike Fighter Squadron [REDACTED]. At V [REDACTED], you underwent three Human Factors Boards (HFBs), in response to a pattern of safety concerns. After another safety incident on 19 May 2020, the Commanding Officer (CO) of [REDACTED] directed a FNAEB to convene regarding your ability to continue flying with [REDACTED] aircraft.

The FNAEB process required a determination of your status as Physically Qualified (PQ) and Aeronautically Adapted (AA). The Flight Surgeon could not make that determination and recommended evaluation by the [REDACTED] Psychiatry department. At [REDACTED] psychiatrists diagnosed you with Major Depressive Disorder, Single Episode, Moderate in partial remission. NAMI determined that you were psychiatrically Not Physically Qualified, but Aeronautically Adapted, for Duty Involving Flying during the time in question of the FNAEB. [REDACTED] did not recommend a waiver due to evidence of residual symptoms of depression. Upon review of the [REDACTED] report, the majority of the FNAEB recommended your transfer to a multi-piloted aircraft; the minority recommended that you stay with the F/A-18 Super Hornet aircraft and transfer to [REDACTED] or [REDACTED]. The majority FNAEB recommendation was endorsed by the CO, [REDACTED], Commander, Carrier Air Wing [REDACTED], and Commander, Carrier Strike Group [REDACTED]. On 7 January 2021, Commander, Naval Air Force Atlantic found that you were unsuitable to continue as a Strike Fighter pilot and directed re-assignment to the Patrol and Reconnaissance Squadron [REDACTED] ([REDACTED]) to continue service as a P-8 pilot. Upon receiving treatment, you were medically cleared to fly and re-designated and transferred to [REDACTED].

The Board carefully considered your request to remove the FNAEB from your record. You allege that your CO abused his discretion in conducting the FNAEB and that once you were diagnosed with Major Depression the FNAEB should have been delayed. The Board concurred with the AO that under the regulations, it was within the CO's discretion to direct the FNAEB and, based on the number of incidents you were involved in at [REDACTED], it was not an abuse of discretion for the CO to convene the FNAEB.

You also contend that the FNAEB was scheduled too soon after notification, depriving you of the ability to properly prepare and depriving you of your right to call witnesses. The Board concurred with the AO that the FNAEB has timelines to encourage efficiency and that the command merely followed those timelines. The Board also noted that there was no requirement that the witnesses had to appear in person; you had time to gather witness statements, as your FNAEB was extended in order for you to have a [REDACTED] evaluation.

The Board also determined that your due process rights were not violated by the decision to conduct the FNAEB without your representation by a lawyer. In making this finding, the Board took into consideration that the instruction allows you bring a lawyer or non-lawyer advisor to the hearing. The Board noted that you elected to bring an advisor, [REDACTED], who attended the hearing. Thus, the Board determined there was no violation of the instruction and any due process violation arguments were waived by your decision to request [REDACTED] to act as your advisor during the FNAEB.

In response to your rebuttal, the Board took note that the command did not ignore your mental health condition when reviewing your case and reaching their decision. CO, [REDACTED] stated in

his endorsement of the FNAEB that you exhibited nine risky behaviors during your time at [REDACTED] and “[w]hile some of these factors are potentially attributable to [your] diagnosis of depressive mood disorder...I remain very concerned, specifically with factors 7 and 9 in that I do not think they are attributable to [your] diagnosis.” Moreover, Commander Naval Air Force Atlantic determined after review of the FNAEB package, to include the [REDACTED] report, and a personal interview with you that it was in your best interest to be re-assigned as a P-8 pilot. Consequently, the Board determined the evidence does not support the existence of material error or injustice with the FNAEB report. Consequently, the Board determined the FNAEB shall remain in your record.

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,

6/11/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]