



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

█  
Docket No. 7638-21  
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 23 June 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 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, as well as the Advisory Opinions (AOs) provided by the Navy Personnel Command PERS-32, PERS-80, and PERS-44 offices on 3 December 2021, 11 January 2022, and 12 May 2022 respectively and your rebuttal response of 8 June 2022.

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 carefully considered your request to remove your Fitness Report & Counseling Record (FITREP) for the reporting period 1 November 2020 to 23 November 2020 and/or modify the FITREP by changing it to a not-observed report and removing all block 41 comments.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

After selection to serve as a fellow at █ as part of the Secretary of the Navy Tours with Industry (SNTWI) Program, you reported for duty on 20 August 2020 after a cross-

country move from the east coast to [REDACTED] state. You were assigned as a technical project manager on [REDACTED] space program “[REDACTED]

You received a not-observed periodic FITREP for the reporting period 11 August 2020 to 31 October 2020. The Head Detailer for your designator served as the RS in accordance with SNTWI guidelines.

On or about 4 November or 5 November 2020, as derived from e-mails exchanged between the [REDACTED] Program Manager and Navy Personnel Command (PERS-44), your fellowship was terminated by [REDACTED]. You were transferred to [REDACTED] on 23 November 2020.

Upon detachment, you were issued a FITREP for the reporting period 1 November 2020 to 23 November 2020. The Head Detailer, serving as the RS, gave you two “2.0” marks for “Military Bearing/Character” and “Teamwork,” resulting in an overall member trait average of 2.67 and a “progressing” promotion recommendation. Block 41 further reflected your early termination due to failure “to meet SNTWI professional conduct standards and minimum work expectations.” The FITREP also stated the immediate termination of your Fellowship was requested by [REDACTED] “for the good of the Fellowship program relationship between the Navy and [REDACTED]”

In block 46, you indicated “I do not intend to submit a statement” but later explained that, given that the senior detailer was the Reporting Senior (RS), you “believed any complaints about the FITREP could result in limited detailing.”

The Board carefully considered each of the following contentions from your initial submission and AO rebuttal:

1) The FITREP was written by a RS, your senior detailer, who was not in your chain of command, did not directly observe your performance, and lacked accurate information or rational supporting documentation.

a) The RS had a lack of awareness to properly evaluate your performance.

b) The [REDACTED] program manager who provided the termination information to the Head Detailer was never your direct manager, direct senior, or supervisor; she only managed the fellowship program not the daily activities of the fellows.

c) You had infrequent interactions with her during your two months in the SNTWI program. In fact, your entire two months with the program were in a virtual environment, never in-person.

d) You had great report with your direct manager; he provided positive feedback to you during your assignment.

2) The information provided to the RS was provided by a subjective non-government organization and specifically an individual, not part of your day-to-day management, who had a cultural bias toward you and personal ethos that led to the effort to termination.

3) The FITREP was written upon termination of your fellowship with [REDACTED] as part of the SNTWI program but, even when being counseled by the RS, you were not provided any feedback, even told none existed, from [REDACTED] justifying its decision to terminate the fellowship. You further contend it is “distressing” that PERS-44 withheld the information provided by [REDACTED] and continued to withhold it from you because “[REDACTED] Confidential” was added to the heading.

4) The FITREP relies upon allegations outside the reporting period and, more specifically, perceived incidents that happened in the previous reporting period for which you received a not-observed FITREP ending 31 October 2020.

5) You were repeatedly told by PERS-445D and PERS-443C that [REDACTED] reserved the right to terminate the fellowship for any cause and your fellowship was terminated due to “failure to fit culture.” You were never provided feedback or justification for your termination because feedback from [REDACTED] is currently not required as part of the SNTWI program. You further contend PERS-44 never acknowledged, although you repeatedly requested, any feedback or “letter report” provided by [REDACTED] regarding your performance that resulted in early termination from the program.

6) Given that the senior detailer was the RS, you believed any complaint about the FITREP could result in limited detailing (reprisal). Further, you were unable to provide a rebuttal statement to the FITREP because the supporting rationale or “letter report” was initially denied to exist, then withheld, then heavily redacted. Only until after winning a Freedom of Information Act (FOIA) appeal in March 2022 did you finally receive the [REDACTED] program manager’s rationale for requesting your early termination.

7) The FITREP shocks one’s sense of justice. The treatment by the [REDACTED] program manager during and after your tour was biased, shameful, resentful, and disingenuous. She concealed the truth from you, and the Navy and precluded access to information in order to prevent any rebuttal. Further, her treatment of you and your family was libel, harassment, and led to reporting that unjustly characterized you and your performance. The Board further considered the spreadsheet provided by you that specifically explained the events described by the [REDACTED] program manager in her termination document.

8) The uncorroborated and misinformed “ample documentation” from [REDACTED] and PERS-443C led to misleading information and an unjust FITREP because PERS-44 did not investigate, attempt to corroborate, or take any formal steps to verify. PERS-44 favored the “positive reputation of the partnership” between the Navy and [REDACTED]. You further contend PERS-44 did not use due diligence to verify the [REDACTED] report – a report with “twisting of tone,” that assumed all your inquiries or candid conversation were complaints, and who was “outright dishonest.” Additionally, you contend there is no indication PERS-44 received direct feedback from your day-to-day manager in your assigned program.

9) The short period at ██████ during a pandemic and under stay-at-home assignment, did not prevent you from excelling at assigned tasks.

10) A not-observed FITREP was required because the reporting period was only 23 days, of which 21 days were spent waiting on orders and transitioning to your next duty station. Further, according to the SNTWI Program Frequently Asked Questions, all officer FITREPs will be signed by the Community Leader and will be “not observed.”

11) You have never been given an opportunity to provide rebuttal to the adverse FITREP.

The Board, however, substantially concurred with the PERS-32 and PERS-44 AOs, and concluded it was not error for the RS to choose to evaluate your performance for the 1 November 2020 to 23 November 2022 reporting period with an observed FITREP. The Board noted that although the SNTWI FAQs indicate officer FITREPs will be “not-observed,” it was not error or unjust for early termination from the program to be captured in an observed report with negative markings, promotion recommendation, and block 41 comments. Further, the Board noted the occasion for the report was your detachment and although the specific incidents that supported the early termination occurred during the previous reporting period, it was not error or unjust for PERS-44 to issue an observed report because the actual termination referenced by the FITREP occurred during the reporting period covered by the FITREP. Lastly, the Board noted the RS, who has the authority and responsibility to issue your FITREP during your assignment to the SNTWI program, has discretionary authority to determine an observed report was warranted, along with the corresponding marks, promotion recommendation, and block 41 comments. The Board concluded it was not error for an observed FITREP to be issued upon your early termination from the SNTWI program.

Having determined it was not error for the RS to issue an observed FITREP, the Board considered your numerous contentions the FITREP was unjust. The Board noted your contentions regarding the ██████ program manager, her bias, and her personal ethos and determined there was insufficient evidence to support your contentions. The Board further noted your contentions the RS relied solely on the input of the ██████ program manager, who purportedly was never your direct manager, direct senior, or supervisor; only managed the fellowship program not the daily activities of the fellows; and whom you had infrequent interactions with her during your two months in the SNTWI program which were in a virtual environment, never in-person. Based on the totality of your supporting documentation, to include your September e-mails to your mentor, your AO rebuttal statement, and the e-mail conversations between ██████ and PERS-44, the Board determined the block 41 comments of the contested FITREP were not unjustly reliant upon the ██████ feedback and termination documentation. Although notably frustrating and distressing to you, the Board determined the withholding of the ██████ performance feedback by PERS-44 was not in error or unjust but was based on its understanding and interpretation of the FOIA requirements. Further, the Board specifically noted there was insufficient evidence to support your decision to not submit a statement due to the perceived “threat” of “limited detailing” if you provided a statement.

Having carefully considered each of your contentions and supporting documentation, the Board concluded there was insufficient evidence of an error or injustice to overcome the presumption of

regularity that the RS acted within her authority and responsibility when she issued the contested FITREP that included negative markings, promotion recommendation, and block 41 comments. Based on the available evidence, the Board concluded there was insufficient evidence of an error or injustice to warrant granting your requested 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,

7/9/2022

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Deputy Director

Signed by: 