



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. 103-22
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. 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 was 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 10 May 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. In addition, the Board considered the advisory opinion contained in Navy Personnel Command memorandum 1000 Ser PERS-43/125 of 11 April 2022; a copy of which was previously provided to you for comment.

On 24 May 1996, you signed an Officer Appointment Acceptance and Oath of Office (NAVCRUIT 1000/20) in the U.S. Navy as an Ensign with a grade date of 24 May 1996 and a designator code of 1390 (An Unrestricted Line Officer who is in training for duty involving flying as a pilot). You were assigned to █ as the Executive Officer in November 2011. In March 2013, you were assigned as the Commanding Officer until you transferred in June 2014.

On 19 August 2015, you notified BUPERS-3/BUPERS-313 that, "Here is my signed contract. If it's not too late to add it to the herd, then that would be great. If it is too late, let me know what else you need from me to go it alone. If you just want to wad it up and throw it in my face, I understand and that's fine too. If anyone asks why I was not included with the others, feel free to tell them the truth which is: I was waiting to be selected for Major Program Manager (MPM) eligible signing up for the added commitment, which is consistent with the attached email from last December."

On 19 August 2015, you notified Commander, Navy Personnel Command (PERS-435) that you hereby apply for the special pay authorized by references FY14/FY15 ACRB Program Information and Title 37, United States Code, Sections 301b, 303a(e), and 373. Contingent upon acceptance of your application for this special pay, you agreed not to resign, retire or voluntarily terminate your flight status with an effective date prior to the completion of your 22nd year of commissioned service, or two years from the date this contract is approved by PERS-43, whichever is later. You understood that you were not eligible to separate, retire, change your designator, or apply for programs that would lead to a change of designator until you had completed your two-year ACRB service agreement as defined in the previous sentence and in FY14/FY15 ACRB Program Information. You understood that even if your ACRB service obligation expires prior to the end of your post-command tour, that you may not be released from active duty, or from your assignment in your 1310 or 1320 designator, until your projected rotation date (PRD) in accordance with MILPERSHAN 1920 Series.

On 1 September 2015, Memorandum for Deputy Chief of Naval Operations (Manpower, Personnel, Training, and Education) Chief of Naval Personnel approved the exception to policy (ETP) request for the FY14/FY15 Navy Active Component (AC) ACRB eligibility contained in attachment one. This approval extended eligibility to 48 officers who left command prior to the approval of the FY14/15 ACRB Program and were not previously eligible for the ACRB. Officers approved under this exception shall adhere to all elements of the ACRB Program guidance at attachment two.

On 23 September 2015, you notified Director, Aviation Officer Assignments (PERS-43) via Assistant, Officer Community Manager (PERS 435) that you respectfully requested an exception to policy for the FY-14 and FY-15 ACRB eligibility and acceptance of the enclosed contract. You elected to not submit a contract in December 2014, which is when the majority of former Commanding Officers not eligible for the ACRB submitted their exception requests. At that time it was more likely than not that you were going to retire and you did not want to agree to a commitment only to retract the contract at a later date.

On 13 July 2016, Director, Aviation Officer Assignments notified you that your request for ETP for the FY-14 and FY-15 ACRB was disapproved. Your name along with 11 other officers went forward as a second ACRB ETP and was disapproved by Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)).

On 16 May 2018, AS (M&RA) informed AS (RDA), AGC that, "Despite what PERS-43 wrote in its denial memo to █ of 13 Jul 20 I 6, ASN (M&RA) did not disapprove █ request. N1 forwarded one name for approval out of twelve officers (including █) who had requested ETPs. N1 made us aware that there were twelve officers who made requests, but ASN (M&RA) did not disapprove █ request or that of any of the other ten officers who were disapproved; he just approved the one officer."

You requested that the Board provide you documentation of ASN(M&RA)'s disapproval of your ETP request; if there is no evidence of consideration and subsequent disapproval by ASN (M&RA), ensure your ETP is submitted to ASN (M&RA) for consideration; if the Board finds that ASN (M&RA) approved your ETP at the time, or subsequently approves your ETP after the

Board ensures its submission for consideration, approve and ensure proper execution of requests 1-4 outlined in block 5 of docket number 7559-18. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertion that your ETP request was erroneously or unjustly withheld from the ASN (M&RA) for consideration. SECNAVINST 5420.193 states that with respect to all petitions for relief properly before it, the Board is authorized to take final corrective action on behalf of the Secretary, unless it is in the category of petitions reserved for decision by the Secretary of the Navy. The following categories of petitions for relief are reserved for decision by the Secretary of the Navy: Petitions involving records previously reviewed or acted upon by the secretary wherein the operative facts remained substantially the same. In accordance with the emails submitted in support of your request, your ETP request was not forwarded to the ASN (M&RA) and was not acted upon; therefore, the Board concluded that submitting your request to the ASN (M&RA) for consideration is unnecessary. The Board cannot determine why your late request, along with 11 others, was not submitted by N1 to ASN (M&RA), or why the only one that was submitted was approved; however, there was no requirement on the part of the Navy to make sure your request was routed to the ASN (M&RA) so many months after the original 48 officers accepted the terms of NAVADMIN 216/14¹. The Board concluded that you were not eligible to receive the ACRB because you had already transferred from your qualifying command. The Navy offered you an opportunity to request an ETP along with the other similarly situated officers and you declined to commit at that time because it was more likely than not that you were going to retire. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

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,

6/3/2022

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Deputy Director

Signed by: █

¹ In accordance with NAVADMIN 216/14 published on 16 September 2014, announces the restoration of the aviation command retention bonus (ACRB). The ACRB is designed to retain for continued naval service those aviation officers with the talent and command experience in our warfighting missions that is critical for the future of our institution. These O-5 commanding officers lead our naval aviation force today, and their skill set and leadership experience are essential to our Navy's success in the future. All officers sitting in command of eligible units beginning 8 September 2014 are eligible to apply. Prospective commanding officers become eligible to apply for the ACRB on the day they take command; eligibility to apply ends on the officer's last day in command of the eligible unit. All eligible officers will be offered \$36,000, paid in two installments of \$18,000, in return for a commitment to remain on active duty as a Naval Aviator or Naval Flight Officer through the end of their 22nd year of commissioned service, or for two years from the date of contract approval, whichever is later.