



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

[REDACTED]  
Docket No. 5977-22  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552  
(b) BUPERSINST 1610.10D

Encl: (1) DD Form 149 w/attachments  
(2) Fitness report for the reporting period 1 Dec 2018 to 30 Apr 19  
(3) NPC memo 1610 PERS-32, 22 Aug 22

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing the fitness report for the reporting period 1 December 2018 to 30 April 2019.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 September 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner was issued a Periodic/Regular fitness report for the reporting period 1 December 2018 to 21 April 2019. Block 41 of Petitioner fitness report noted that, "[. . .] transferred to [REDACTED] in Dec 2017 absent a TS/SCI clearance, making it difficult to contribute to J5N. His clearance remained unestablished at the beginning of this reporting period, 01DEC18; one year after assignment to the Unit." In addition, block 41 noted, "For the year prior to this report, plus this 5-month reporting period, member has been unable to provide operational support to [REDACTED]." Petitioner's promotion recommendation was marked 'Promotable'. The reporting senior (RS) annotated block 46 "Certified Copy Provided."

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

c. In correspondence from counsel, Petitioner contends that according to reference (b), it is clear that the language used by the reporting senior (RS), also the Commanding Officer (CO) is inappropriate. Specifically, the CO did not address an “official” reason leading to the issuance or non-issuance of his Top Secret/Sensitive Compartmented Information (TS/SCI) clearance. The CO noted that the responsible parties were engaged in procurement of the clearance, then uses the lack of a clearance to address Petitioner’s lack of support to the J5N. Petitioner also contends that when applying for the billet, there was no requirement that he have a TS/SCI clearance and his orders did not indicate that a TS/SCI clearance was required. Petitioner argues that the entirety of the evaluation centers on his lack of a TS/SCI clearance, something that is completely out of his control and the delay is not due to an issued in his background. In addition, [REDACTED] is a joint billet and the CO was required to comment on the joint assignment.

d. In a memorandum dated 22 August 2022, the Navy Personnel Command (PERS-32) provided an advisory opinion (AO) for the Board’s consideration indicating that PERS-32 would support removal of the fitness report. The AO noted that the fitness report is suspect of being perceived as adverse. The RS also noted that according to reference (b), the RS is allowed to enter “Certified Copy Provided” in the member’s signature block when the report is not adverse. Members must sign all adverse reports or a statement of why the member was unable to sign will be placed in the members signature block. The AO determined that although the fitness report contains no adverse performance traits or promotion recommendation, the block 41 comments may be perceived as an injustice and adverse. The AO also determined that, had Petitioner signed the fitness report, it would be valid even if the comments were perceived to be adverse. Enclosure (3).

## CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an injustice warranting corrective action.

The Board substantially concurred with the AO. In this regard, the Board determined that the block 41 comments are perceived as being adverse and indicates that Petitioner’s lack of and/or failure to obtain a TS/SCI clearance was a weakness that impacted his ability to provide the necessary operational support to the command. The Board found Petitioner’s evidence sufficient to support that he was not required to have a TS/SCI clearance for the billet to which he was selected and assigned. The Board also determined that because the comments indicate a weakness in Petitioner’s performance and are perceived as adverse, the RS was in error by not affording Petitioner the opportunity to acknowledge the fitness report and to submit a statement.

## RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner’s naval record be corrected by removing enclosure (2) and replacing it with a memorandum for continuity.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED]

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]

Deputy Director

[REDACTED]