



Docket No. 7978-24
Ref: Signature Date

Dear [REDACTED],

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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 February 2025. 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 Office of Legal Counsel (BUPERS00J) letter of 15 November 2024 and your response to the opinion.

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.

Commanding Officer, Carrier Airborne Early Warning Squadron 120 notified you that “[b]y the authority of the Chief of Naval Air Training, you are designated a Naval Flight Officer, effective 02 May 2008, in recognition of successful completion of the prescribed course of instruction.”

On 4 September 2012, you were issued official change duty orders (BUPERS order: 2492) while stationed in [REDACTED] with an effective date of departure of March 2013. Your ultimate activity was [REDACTED] for duty under instruction in a flying status not involving flying with an effective date of arrival of March 2013 with a projected rotation date (PRD) of September 2014.

On 10 January 2013, you were issued official modification to change duty orders (BUPERS order: 2492) while stationed in ██████████ with an effective date of departure of February 2013. Your ultimate activity was ██████████ ██████████ for duty under instruction in a flying status not involving flying with an effective date of arrival of March 2013 with a PRD of September 2014.

On 22 February 2013, you transferred from ██████████ and arrived at ██████████ on 1 March 2013 for duty under instruction.

On 17 April 2014, Commander, Navy Personnel Command published Distribution Guidance Memorandum (DCM) #4302-1404, Purpose. The Department of the Navy authorizes Aviation Career Continuation Pay (ACCP) as a supplement to Aviation Career Incentive Pay (ACIP) to maximize retention of career-minded aviation officers.

Terms. "ACCF" refers to the Aviation Career Continuation Pay program in general, as governed by OPWAVINST 7220.9. The Aviation Department Head Retention Bonus ("ADHRB") is a subset of the FY14 ACPG program that, offers a retention incentive, to officers at or near the end of their initial winging Active Duty Service Obligation (ADSO). The intent of the ADHRB is to retain aviation-designated officers through their department head tours.

"This -DGM will remain in effect until cancelled or superseded."

FY14 AVIATION DEPARTMENT HEAD RETENTION BONUS (ADHRB) PROGRAM INFORMATION listed the following: "The Department of the Navy authorizes Aviation Career Continuation Pay (ACCP) as a supplement to Aviation Career Incentive Pay (ACIP) to enhance retention of career-minded aviation officers. The intent of the ADHRB is to retain aviation officers through their department head (DH) tours. Commanding Officers (CO) shall encourage qualified aviators to submit applications for the ADHRB. COs must ensure that the information provided in the officer's application is complete and accurate, that the officer meets all eligibility requirements, and that no action is pending that may result in the officer being ineligible for ACCP. cos must provide positive endorsement of each ADHRB application.

The FY14 ADHRB offers eligible officers an incentive to remain on active duty in aviation service for five years, beginning at or after the expiration of their initial winging active-duty service obligation (ADSO). Officers who sign ADHRB contracts incur five years of obligated service beginning on the later of the following two dates: 1) expiration of initial winging ADSO, or 2) contract approval by PERS-43. Entering into an ADHRB contract also constitutes consent to be considered by the ADHSB and, if selected, to accept DH orders and complete a DH tour."

"Application Procedures...a. The signed contract... b. The ADHRB constitutes a binding legal contract. As such, applicants must sign and submit the FY14 ADHRB contract exactly as written in enclosure 2 of this DCM verbatim...e. ADHRB contracts will be considered binding as of the date of PERS-43 approval."

“Pers-43 is the final adjudication authority for all ACCP program execution issues to include policy, eligibility, termination, and repayment. This does not include remission of indebtedness cases. Any request for remission of indebtedness will be adjudicated by proper authority in accordance with applicable statute, Department of Defense regulations and Department of the Navy guidance.”

On 13 May 2014, you were issued official change duty orders (BUPERS order: 1344) while stationed in [REDACTED] with an effective date of departure of September 2014. Your ultimate activity was [REDACTED] for duty in a flying status involving flying with an effective date of arrival of October 2014 with a PRD of October 2016.

On 25 August 2014, you were issued official modification to change duty orders (BUPERS order: 1344) while stationed in [REDACTED] with an effective date of departure of September 2014. Your intermediate (01) activity was [REDACTED] [REDACTED] for temporary duty under instruction in a flying status involving flying with an effective date of arrival of 14 October 2014. Your ultimate activity was [REDACTED] [REDACTED] for duty in a flying status involving flying with an effective date of arrival of November 2014 with a PRD of November 2016.

On 30 September 2014, you transferred from [REDACTED] and arrived to [REDACTED] [REDACTED] on 14 October 2014 for duty.

On 9 October 2014, you were issued official modification to change duty orders (BUPERS order: 1344) while stationed in [REDACTED] with an effective date of departure of September 2014. Your intermediate (01) activity was [REDACTED] [REDACTED] for temporary duty under instruction in a flying status involving flying with an effective date of arrival of 14 October 2014. Your ultimate activity was [REDACTED] [REDACTED] for duty in a flying status involving flying with an effective date of arrival of November 2014 with a PRD of November 2016.

On 7 November 2014, you transferred from [REDACTED] and arrived to [REDACTED] on 12 November 2014 for duty.

On 31 January 2015, you transferred from [REDACTED] and arrived to [REDACTED] on 31 January 2015 for duty.

On 10 November 2016, you were issued official change duty orders (BUPERS order: 3166) while stationed in [REDACTED] with an effective date of departure of January 2017. Your ultimate activity was [REDACTED] [REDACTED] for duty in a flying status not involving flying with an effective date of arrival of January 2017 with a PRD of January 2020.

On 16 January 2017, you transferred from [REDACTED] and arrived to [REDACTED] [REDACTED] on 27 January 2017 for duty.

On 9 August 2017, your Master Military Pay Account (MMPA) shows that you received Aviator Continuation Pay effective 19 August 2014 entitled to \$75,000 and paid to date of \$60,000.

On 29 May 2018, you notified PERS-433C that “[t]his is my formal decline of ██████████ and ██████████. I understand this means I will have to pay back the bonus. Please let me know if there is any paperwork I need to complete.”

On 1 June 2018, Director, Aviation Officer Assignments (PERS-43) notified you that “[y]our request to be released from your Aviation Career Continuation Pay (ACCP) contract has been received and is being processed.

Your decision to decline your Department Head assignment is a breach of contract per references (a) and (b). Your ACCP eligibility has been terminated, resulting in the cancelation of future ACCP payments and the recoupment of all payments received. To date you have received four payments of \$15,000 (pre-tax), valued at \$60,000. A debt for the amount of \$60,000 will be placed in your name with DFAS. Repayment can be coordinated with your local PSD.

The five-year service obligation associated with the ACCP contract you signed remains intact and requires an obligated service waiver to separate. Currently, you are obligated until 31 August 2019.”

On 15 June 2020, you transferred from ██████████ and arrived at ██████████ on 25 June 2020 for duty.

On 14 June 2021, you signed a Waiver/Remission of Indebtedness Application (DD Form 2789) pertaining to the FY14 Aviation Career Continuation Pay (ACCP) Recoupment of \$60,000. Furthermore, Deputy Disbursing Office recommended to deny your request.

You retired with an Honorable character of service and were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) for the period of 19 December 2005 to 31 December 2021 due to Non-Selection Permanent Promotion.

On 8 December 2023, Office of the Assistant Secretary notified you that “I have reviewed your request dated June 21, 2021, for remission of your debt to the U.S Government. This debt was incurred due to your request to be released from Aviation Career Continuation Pay (ACCP) and declining your Department Head (DH) assignment.

After careful consideration, I have determined that your request to cancel the repayment of the unearned portion of the ACCP you received in the amount of \$60,000 is not warranted based on not fulfilling your contract. Although your name did not appear on the published DH list, you were offered a DH position that you declined.

In line with the guidance set forth in the Department of Defense Financial Management Regulation, Volume 7A, Chapter 2, a Service Member who fails to fulfill the service conditions specified in the written agreement for pay may be required to repay an amount

equal to the unearned portion of the pay. In this case, you did not complete your obligation due to your decision to decline DH assignment. Accordingly, your request for remission of debt is disapproved.”

On 16 August 2024, Division Director, Aviation Distribution and Management (PERS-43) notified Chief of Case Management, BCNR via Assistant Commander, Navy Personnel Command for Career Management (PERS-4) that ██████████ is contesting his indebtedness from PERS-43, originally initiated 01 JUN 2018. The Deputy Assistant Secretary of the Navy for Military Manpower and Personnel [DASN MMP], denied his request for a remission of indebtedness on 8 DEC 2023, ref (e) [DASN MMP Response to ██████████].

He was approved for the FY-14 Aviation Career Continuation Pay (ACCP) program. The FY-14 Aviation Department Head Retention Bonus (ADHRB) is a subset of the ACCP, ref (a) [FY-14 ACCP Program Information].

██████████ screened for Aviation Department Head (DH) and was selected as Qualified with Insufficient Opportunity (QIO). Per the ADHSB convening order, QIO's have met all selection criteria but are not published with the DH selects due to limited quota allotments. A QIO may be identified to fill a DH billet and is subsequently considered selected for DH. The ACCP contract signed by ██████████. ██████████ per ref (b) ██████████ ██████████ Signed FY-14 ACCP Contract] stated that if he did not accept orders to or complete a DH tour for any reason, he would be in breach of contract and subject to recoupment. ██████████ ██████████ was called upon to fill a DH role. On 29 May 2018, he officially declined DH in writing and acknowledged the requirement to repay any received disbursement of the bonus per ref (c) [29 May 2018 Email from ██████████ ██████████].

Per ref (a). PERS-43 is the final adjudication for all ACCP program execution issues to include policy, eligibility, termination and repayment. PERS-43 informed ██████████ ██████████ in writing that his declination of DH was in breach of the ACCP contract, and a recoupment would be initiated for payments already received. Per ref (a), any request for remission of indebtedness is to be adjudicated by DASN (MMP), who declined ██████████ ██████████ request. ██████████ ██████████ record should not be amended. His record concerning selection as a QIO, subsequent selection as an Aviation DH, and declination of his DH status is correct.”

You request the Board to inform PERS-43 in writing that, based on the terms outlined in both the FY14 ADHRB/ACCP contract and the FYI4 ADHRB Policy Memo, QIO does not constitute Department Head selection. You further request the Board correct PERS-43's determination that you breached your ADB/ACCP contract by waiving, remitting, or instructing PERS-43 to rescind in writing the debt that was incorrectly assigned for the recoupment of four ACCP payments. The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions. You assert that, “[a]n error was made due to a misunderstanding and/or misinterpretation of the contractual terms within my ADHRB contract. The contract states, ‘if selected, I will accept orders to and complete a DH tour.’ I was not selected. My name was not on the released Aviation DH selection list. Instead, I was classified as QIO. There is no definition, nor designation, that QIO constitutes selection within my contract nor the ADHRB Policy Memo. Additionally, DASN [MMP] confirmed I was

‘offered’ a DH position. Since I was not selected for a DH tour, and I fulfilled all other requirements under the ADHRB contract, PERS-43 should not have assigned me a \$60k debt.”

However, the contract is clear that, “I understand that final failure to be selected for promotion to LCDR (0-4), or final failure to be selected for DH, will terminate this contract. In either case, I will keep that portion of ACCP that I earned, from beginning of ACCP obligated service through the release date of results of the applicable board; future payments will cease, however, and unearned portions of the ACCP will be recouped... if I do not accept orders to or complete a DH tour for any reason, or if I am unable to fulfill my five year service obligation for any reason, I will become ineligible for ACCP, that all scheduled future payments will be cancelled, and that previous payments received may be subject to repayment...” The Board understands this to mean that when you signed the contract, you agreed to accept the bonus, if offered, in exchange for a service obligation and accepting a DH tour, if offered. The Board determined that the intent of the ADHRB is *to retain aviation officers through their DH tours*. Furthermore, your contract clearly states that you would accept orders to or complete a DH tour and that not doing so, *for any reason*, meant that you would be subject to recoupment of all previous payments of ACCP and forfeit future payments. Your MMPA shows that you received Aviator Continuation Pay effective 19 August 2014 and that you received several annual installments totaling \$60,000. You were subsequently offered a DH tour, within the term of your obligation, and you declined it, stating that, “I understand this means I will have to pay back the bonus.” Therefore, the Board determined with PERS-43 that you were in breach of contract.

Your request for remission has been before the DASN MMP and was denied. The Board determined that you have provided no compelling reason to overturn her decision and that a change to your record is not warranted. In this connection, the Board substantially concurred with the comments contained in the aforementioned 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,

3/6/2025

