



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

██████████
Docket No. 8172-24
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 13 March 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 Officer of Legal Counsel (BUPERS-OOJ) letter, 16 January 2025, which was previously provided to you and your representative/counsel listed on your DD Form 149 for comment.

On 14 February 2011, you were issued an Officer Appointment Acceptance and Oath of Office (NAVPERS 1000/4) with a designator code of 1390 (An Unrestricted Line Officer who is in training for duty involving flying as a pilot) in the active U.S. Navy listing block 13 (Permanent grade) ENS, block 14 (Permanent grade date) 17 December 2010, block 15 (Present Grade) ENS, and block 16 (Present grade date) 17 December 2010. You/witness signed this form on 18 April 2011.

In accordance with OPNAVINST 7220.18A published on 1 October 2019, “[t]o provide information, policy and procedures for the administration of aviation incentive pay (AvIP) and aviation bonus (AvB) for aviation officers in line with references (a) [DoD Instruction 7730.67 of 20 October 2016], [37 U.S.C.], [SECNAVINST 7220.88], [DoD 7000.14-R, Financial Management Regulation, Vol. 7A of June 2019], [NAVPERS 15560D], [CNAF M-3710.7 of 5 May 2016], [NAVMED P-117], [OPNAVINST 1000.16L], through (i) [BUPERSINST 1301.40C].”

“PERS-43 and PERS-46 is the final adjudication authority for all AvB execution matters to include policy, eligibility, termination and recoupment. PERS-43 and PERS-46 are delegated authority to: (1) evaluate eligibility, (2) accept written AvB agreements by naval aviators to remain on active duty in a billet designated by PERS-43, and (3) administer the AvB program per this instruction.”

Aviation Department Head Retention Bonus Program Information: Officers Selected for Lieutenant Commander to be Considered in the Fiscal Year 2021 Aviation Department Head Screen Board (Active Component: Designators 1310 And 1320).

“The Department of the Navy authorizes the Aviation Bonus (AvB) as a supplement to Aviation Incentive Pay (AvIP) to enhance retention of career-minded aviation officers. The intent of the Aviation Department Head Retention Bonus (ADHRB), a subset of the Navy’s overall AvB program, is to retain aviation officers through their Department Head (DH) tours. Eligibility window is a single year; aviators interested in the program must make a decision within this timeframe.”

On 1 March 2021, you were appointed to Lieutenant Commander/O-4.

In accordance with NAVADMIN 049/21 published on 26 February 2021, “[t]his NAVADMIN announces the Fiscal Year (FY) 2021 Aviation Department Head Retention Bonus (ADHRB). The FY-21 Aviation Command Retention Bonus (ACRB) will be addressed via a separate NAVADMIN.”

“Contracts are offered with either a three or five-year obligation that begins upon expiration of the officers winging ADSO or contract approval, whichever is later. The intent is to provide flexibility when making career decisions and to encourage officers to fulfill a department head tour and continue naval service.”

“While all aviators that complete milestone assignments are equally valued, specific T/M/S+D rates vary according to respective community inventory health. Those communities experiencing the greatest retention challenges are incentivized with the highest rates. AC ADHRB retention bonus pay rates for FY-21 include:”

“Three-year obligation: HSM Pilot \$20,000/year (\$60,000 total).”

On 9 June 2021, you submitted a Request for Aviation Department Head Retention Bonus (ADHRB) 3 Year Contract to Commander, Navy Personnel Command (PERS-435) and agreed to the following:]. “I have read and understand the provisions of references (a) [FY-21 ADHRB Program Information (available on NPC website)] through (f) [OPNAVINST 7220.18 Series] including all provisions related to termination of payments to be made under this agreement and circumstances under which recoupment of sums paid may be required, to which I agree. I understand that if I fail to fulfill the terms of this contract, I may be subject to repayment of monies received in accordance with references (a), (b) [37 U.S.C. §334] and (c) [DoD Financial Management Regulation, Volume 7A, Chapter 2]. I hereby apply for the special pay authorized by references (b). (d) [SECNAVINST 7220.88 Series] and (e) [MILPERSMAN 1920 Series].”

“Contingent upon acceptance of my application for this special pay, I agree not to resign, retire or voluntarily terminate my flight status with an effective date within 3 years from the completion of my undergraduate- flight-training-related active-duty service obligation (ADSO) or acceptance of this request, whichever is later. I understand that I may not be eligible for transfer or redesignation if I don’t meet the criteria outlined in reference (a). I understand that even if my ADHRB service obligation expires prior to the end of my department head (DH) tour, that I may not be released from active duty, or from my assignment in my 1310 or 1320 designator, until my PRD [projected rotation date], in accordance with reference (f). I understand that I will be ineligible for any other Aviation Bonus (AvB) program until the expiration of my ADHRB service obligation. I understand that upon approval by PERS-43, this contract is binding, and that thereupon, as a Pilot (1310) in the HSM community, I will be eligible to receive \$60,000 paid out over the length of this agreement as described in reference (a).”

“By submitting this application. I acknowledge my intent and desire to participate in the DH screening process and consent to having my record reviewed, when I become eligible, by an aviation DH screen board (ADHSB). I acknowledge that I will not attempt to influence the board against selecting me (via “don’t pick me” letter, etc.), and that, if selected, I will accept orders to and complete a DH tour. I understand that final failure to be selected for DH will terminate this contract. I will retain AvB monies already received through the release date of results of the applicable board, but scheduled future ADHRB installments will be cancelled. I understand that if I attempt to influence the ADHSB against selecting me. If I do not accept orders to or complete a DH tour for any reason, or if I am unable to fulfill my 3-year ADHRB service obligation for any reason, I will become ineligible for AvB. Scheduled future payments will be cancelled, and previous payments received may be subject to repayment in accordance with references (a), (b), (c), (d). (e).”

On 6 July 2021, you were issued official change duty orders (BUPERS order: 1881) while stationed in ██████████, ██████████, ██████████ with an effective date of departure of September 2021. Your intermediate (01) activity was ██████████, ██████████, ██████████ for temporary duty under instruction in a flying status involving flying with an effective date of arrival of 1 October 2021. Your intermediate (02) activity was ██████████, ██████████, ██████████ for temporary duty under instruction in a flying status involving flying with an effective date of arrival of 1 November 2021. Your intermediate (03) activity was ██████████, ██████████, ██████████ for temporary duty under instruction in a flying status involving flying with an effective date of arrival of 8 November 2021. Your ultimate activity was ██████████, ██████████, ██████████ for duty in a flying status involving flying with an effective date of arrival of February 2022 with a PRD of May 2024.

On 30 July 2021, you were issued official modification to change duty orders (BUPERS order: 1881) while stationed in ██████████, ██████████, ██████████ with an effective date of departure of September 2021.

On 7 September 2021, you transferred from ██████████ and arrived at ██████████ on 1 October 2021 for duty.

On 24 September 2021, you were issued official modification to change duty orders (BUPERS order: 1881) while stationed in [REDACTED], [REDACTED], [REDACTED] with an effective date of departure of September 2021.

Report of the FY-22 Aviation Department Head Screen Board List of Officers Recommended listed your name under HSM OP.

On 4 April 2023, you were issued official modification to change duty orders (BUPERS order: 1881) while stationed in [REDACTED], [REDACTED], [REDACTED] with an effective date of departure of May 2023. Your ultimate activity was [REDACTED], [REDACTED], [REDACTED] for duty in a flying status not involving flying with an effective date of arrival of May 2023 with a PRD of May 2025.

On 1 May 2023, Director, Aviation Officer Assignments (PERS-43) notified you that “[y]ou signed a FY-21 standard, three-year Aviation Department Head (DH) Retention Bonus on 9 June 2021. You have been paid to date \$40,000 out of \$60,000 to accept Aviation DH orders and complete a DH tour per reference (a) [FY-21 Aviation Department Head Retention Bonus Program Information]. As of 15 February 2023, per reference (c) [NAVADMIN 038/23], you are allowed to be detailed to operational units and serve your full department head commitment which is 27 months per reference (d) [REDACTED]. You were explicitly offered DH orders to be accepted no later than 30 April 2023. You did not accept those orders and therefore cannot fulfill your role as a department head. This is a breach of contract due to evading the performance of an aviation DH tour in the active component Navy Unrestricted Line. Accordingly, a recoupment of \$40,000 has been forwarded to DFAS for repayment.

Your obligated service remains intact unless waived by the Chief of Naval Personnel in accordance with reference (b) [NAVADMIN 288/17]. Your obligated service continues until 15 June 2024.”

On 1 May 2023, Director, Aviation Officer Assignments (PERS-43) notified you that “[y]ou were explicitly offered aviation department head orders to be accepted no later than 30 April 2023. You did not accept those orders and therefore declined your administrative milestone assignment. Per reference (a) [OPNAVINST 7220.18A] you are not entitled to the milestone aviation incentive pay (AvIP) monthly rate. A recoupment of \$7,385.00 has been forwarded to DFAS for repayment.”

On 10 May 2023, you were issued official change duty orders (BUPERS order: 1303) while stationed in [REDACTED] with an effective date of departure of May 2023. Your ultimate activity was [REDACTED], [REDACTED], [REDACTED] for duty in a flying status not involving flying with an effective date of arrival of May 2023 with a PRD of May 2025.

On 23 May 2023, you transferred from S C/O [REDACTED] and arrived at [REDACTED] on 31 May 2023 for duty.

On 30 May 2023, you notified Commander, Navy Personnel Command via (1) Commanding Officer, [REDACTED], (2) Commanding Officer, [REDACTED] (3) Director, Aviation Officer Assignments. PERS-43, Navy

Personnel Command, (4) Assistant Commander for Career Management. PERS-4, Navy Personnel Command, (5) Commander, Naval Personnel Command that “[c]omplaint of wrongs, under reference (a) [Article 1150. U.S. Navy Regulations], is submitted in compliance with reference (b) [Article 107. Uniform Code of Military Justice].”

“PERS is in active material breach of contract by recouping consideration paid while acknowledging that I remain in full compliance with all aspects of my contract. This action constitutes a violation of contract law. All individuals involved in the decision to unilaterally terminate my contract, send me to a disassociated sea tour without my consent, and recoup consideration paid were all made aware of the fact that I never declined a valid DH offer and never once violated my contract. All enclosed documents and facts asserted in the entirety of this charge can be substantiated by original correspondence if needed beyond those included...”

On 31 May 2023, you transferred from ██████████ and arrived at ██████████ on 1 June 2023 for duty.

As of 21 December 2023, your Master Military Pay Account (MMPA) shows that you received Aviator Continuation Pay effective 16 June 2021. Amount of annual payment \$20,000. The total amount of entitlement payable for completion of the contract \$60,000. Total amount of entitlement that has been paid to date \$40,000.

On 28 December 2023, you were issued official separation orders (BUPERS order: 3623) while stationed in ██████████, ██████████, ██████████ with an effective date of departure of June 2024. Furthermore, the following was listed: “Present CO directed to detach member in time to permit completion separation processing not later than 30 Jun 2024 IAW MILPERSMAN 1050-300 series. Accordance MILPERSMAN 1910-812 report present CO for temporary duty in connection with separation processing. Upon completion and when directed detach. By direction of the President, the Secretary of the Navy has accepted your resignation of your present commission in the U.S. naval service submitted on 03 Jun 2023, to take effect at 2400 on date of detachment from activity at which separated.”

You resigned with a 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 23 April 2011 to 30 June 2024 upon completion of required active service.

On 16 January 2025, Office of Legal Counsel (BUPERS-00J) provided an Advisory Opinion to BCNR concluding that Petitioner’s requests have no merit and warrant no action. It states in part, that, “[o]f note, this issue was previously reviewed by the CNPC and Navy Inspector General (NAVIG) via the Petitioner’s previous Article 1150 Complaint, per references (1) [Complaint of Wrongs Under Article 1150 by ██████████ dtd 30 May 23] and (m) [OJAG Code 13 Letter in Response to Article 1150 dtd 11 September 24]. CNPC found that the government’s actions of recouping the Petitioner’s bonus payments were within the discretion and authority as Director, Aviation Officer Assignments, Navy Personnel Command.”

You requested the following: Immediate termination of recoupment of both AvB and AvIP and reimbursement to include all interest accrued and opportunity cost of lost investment capital.

The charge of breach of contract must be retracted and corrected in a manner that erases it entirely from your record. This includes acknowledgement by all individuals party to the decision; the personal and professional defamation must be retracted and corrected in a manner that erases it entirely from your record. This includes acknowledgement by all individuals party to the decision. Additionally, you state that, “[a]s I remain in full compliance with the only contract I ever signed, as proven above, withholding my third scheduled AvB payment would constitute an additional breach of contract, and thus must be paid as scheduled, unless at a future date it can be shown that I did in fact breach contract.” The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, to include your assertions.

However, the Board determined that you were not in *full compliance* with your signed contract. Your contract clearly states that “...if selected, I will accept orders to and complete a DH tour...” and “[i]f I do not accept orders to or complete a DH tour for any reason, or if I am unable to fulfill my 3-year ADHRB service obligation for any reason, I will become ineligible for AvB.” The Board concluded that in accordance with NAVADMIN 049/21, “[t]he intent is to provide flexibility when making career decisions and to encourage officers to fulfill a department head tour and continue naval service.” Your ADHRB contract included a 3-year service obligation but also included terms that required you to complete a DH tour to keep your bonus payments. Additionally, while you were certainly within your right to request a religious accommodation to the COVID vaccine, doing so delayed your ability to fulfill a DH tour in its entirety prior to the end of your service obligation, however the obligation to actually serve *through a DH tour* to keep your bonus remained. You were selected and explicitly offered DH tour orders which you willingly and voluntarily did not accept, therefore the Board determined that you were in breach of the terms you originally agreed to in your ADHRB contract, that the recoupment is valid, and that no change to your record is warranted. 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,

4/22/2025

