



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 5707-99

30 September 1999

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

Subj: M. [REDACTED] USM [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 17 Jun 99 w/attachments
(2) HQMC PERB memo dtd 9 Sep 99 w/encl
(3) HQMC MMOA-4 memo dtd 8 Sep 99
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 25 November 1986 to 1 February 1987, 7 March to 31 October 1987, and 1 November 1987 to 14 July 1988, copies of which are at Tabs A through C respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness reports. Petitioner further requested removal of his failure of selection by the Fiscal Year (FY) 2000 Lieutenant Colonel Selection Board, so as to be considered by the selection board that is scheduled to convene on 19 October 1999 to consider officers of his category for promotion to the grade of lieutenant colonel as an officer who has not failed of selection to that grade. Finally, he requested that if he is selected by the FY 2001 Lieutenant Colonel Selection Board, he receive the 1 May 1999 date of rank and effective date as a lieutenant colonel he says he would have received from the FY 2000 promotion board. This request was not considered, since he has not been selected or promoted to lieutenant colonel.

2. The Board, consisting of Messrs. Brezna, Mazza, and Silberman, reviewed Petitioner's allegations of error and injustice on 29 September 1999, 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, 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, finds as follows:

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

b. In correspondence attached as enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

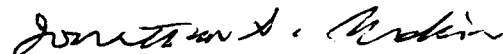
a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

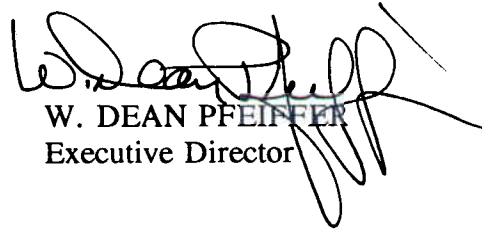
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

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.



W. DEAN PFEIFFER
Executive Director

5707-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER
9 Sep 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF MAJOR [REDACTED]
[REDACTED] USMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 1 Sep 99
(2) CMC Advisory Opinion 1600 MMOA-4 of 8 Sep 99

1. As evidenced by enclosure (1), PERB removed from [REDACTED] official military record, the fitness reports for the periods 861125 to 870201 (TD), 870307 to 871031 (AN), and 871101 to 880714 (CH).

2. We defer to BCNR on the issue of [REDACTED] request for the removal of his failure of selection to the grade of Lieutenant Colonel. Enclosure (2) is furnished to assist in resolving that matter.

[REDACTED]
[REDACTED]
[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the
Commandant of the Marine Corps

5707-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
SEP 1 1999

From: Commandant of the Marine Corps
To: Major [REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
29 Jan 87	[REDACTED]	861125 to 870201 (TD)
21 Oct 87	[REDACTED]	870307 to 871031 (AN)
28 Jun 88	[REDACTED]	871101 to 880714 (CH)

2. There will be inserted in your Naval record a memorandum in place of the removed reports. The memorandum will contain appropriate identifying data concerning the reports and state that they have been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the reports or the events which may have precipitated them, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED]

By direction



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5707-96

IN REPLY REFER TO:

1600
MMA-4
8 Sep 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR [REDACTED] MC

Ref: (a) MMER Request for Advisory Opinion in the case of
[REDACTED]
USMC of 1 Sep 99

1. Recommend approval of [REDACTED] request for removal of his failure of selection. This recommendation gives him the benefit of the doubt.

2. Per the reference, we reviewed [REDACTED]'s record and petition. He failed selection on the FY00 Lieutenant Colonel Selection Board and subsequently successfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Temporary Duty fitness report of 861125 to 870201, Annual report of 870307 to 871031 and Change of Reporting Senior report of 871101 to 880714. Major [REDACTED] requests removal of his failure of selection.

3. In our opinion, the petitioned fitness reports do present significant competitive concern to the record and their removal enhances the competitiveness of the record. While we recognize the record contains other areas of competitive concern, we believe [REDACTED] should be afforded the benefit of the doubt and have his failure of selection removed.

4. Point of contact is [REDACTED]

[REDACTED]

Lieutenant Colonel, U. S. Marine Corps
Head, Officer Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division