

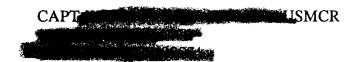


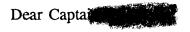
#### **DEPARTMENT OF THE NAVY**

BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG

Docket No: 4271-01 15 August 2001





This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested that the fitness report for 10 May to 27 June 1998 be modified by removing the mark of "EX/OS" (excellent/outstanding, the second highest) in item 15a (your estimate of this Marine's general value to the service) and the marks in items 15b and c (showing five captains ranked above you and one with you). You also requested removal of your failure by the Fiscal Year (FY) 2001 Reserve Major Selection Board.

It is noted that the Commandant of the Marine Corps (CMC) has modified items 15b and c of the fitness report in question to show that you were not compared with any other captain.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 August 2001. 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, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 23 May 2001 with enclosures, and the advisory opinion from HQMC dated 22 May 2001, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board noted your contention that the reporting senior advised you that you would be marked "OS" (highest) in item 15a. However, this did not persuade them that the "EX/OS" mark he actually assigned you was improper. They substantially concurred with the advisory opinion dated 22 May 2001 in finding your selection by the FY 2001 Reserve Major Selection Board would have been definitely

unlikely, even if the fitness report in question had reflected the correction to items 15b and c. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously 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,

W. DEAN PFEIFFER Executive Director

Enclosure



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

1610 MMER 23 May 01

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

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 10 May 01

(2) CMC Advisory Opinion 1600 CMT of 22 May 02

(3) Copy of CMC ltr 1610 MMER/PERB of 23 May 01

1. As evidenced by enclosure (1), PERB modified Item 15 and page two of subject's fitness report for the period 980510 to 980627 (TD).

2. We defer to BCNR on the issue of Captair request for the removal of his failure of selection to the grade of Major. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provided Captain with a copy of the Advisory Opinion contained at enclosure (2).

Head Performance Ev

Head, Performance Evaluation Review Branch Personnel Management Division By direction of the Commandant of the Marine Corps



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

1670 REFER TO: MMER/PERB 1 0 MAY 2001

From:

Commandant of the Marine Corps

To:

Captain

Subj: CORRECTION TO MILITARY RECORD

Ref:

(a) Your Application for Correction of Military or

Naval Record (DD Form 149) of 15 Feb 01

(b) MCO 1610.11C

Encl: (1) Copy of Fitness Report 980510-980627 (TD) (modified)

- 1. This responds to your request contained in reference (a).
- 2. Per the provisions of reference (b), the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts, the Board has directed that Items 15a, b, and c of your fitness report for the period 980510 to 980627 (TD) will be modified to show that you were the only officer reported on (i.e., "one-of-one") and all names (except yours) will be removed from the Reporting Senior's Certification on page two. In addition, the Automated Fitness Report System (the database which generates your Master Brief Sheet) will be changed accordingly. For your information, a copy of the report, as it will now appear in your record, is provided at the enclosure.
- 3. The Commandant of the Marine Corps is not empowered to grant or deny a request to remove a failure of selection. Consequently, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for adjudication of that issue.



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

IN REPLY REFER TO:

1600 CMT 22 May 2001

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

Subj: RESERVE AFFAIRS ADVISORY OPINION ON BCNR

APPLICATION; CASE OF

Ref: (a) CMC ltr 1610/MMER/PERB dtd 10May 2001

- 1. Recommend Capt request to remove his failure of selection be denied. The following justification is provided.
- 2. Captain verall record is not very competitive. His record reflects significant negative trends in the areas of regular duties, administrative duties, attention to duty, initiative, judgment, force, leadership, and economy of management. Significant trends are identified by five or more marks in excellent. On many reports Captain s not rated against other officers. When he is rated against others, Captain is rarely ranked highest. In 60% of his reports, Captain s rated less than outstanding. In addition, Captain has an unresolved 10-month date gap in his record and has not completed PME for his grade. These factors may have caused his record to be less than competitive when compared to his peers.
- 3. The reference authorized a minor change to the value and distribution marks on one of Captail fitness reports. However, this change does not affect the officer's overall performance history. Therefore, there is no compelling reason to remove his failure of selection.
- 4. Point of contact is

