



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

BJG
Docket No: 4958-01
13 July 2001

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

Subj: MA [REDACTED], USMCR [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 7 Mar 01 w/attachments
(2) HQMC PERB memo dtd 21 Jun 01 w/encl
(3) Subject's e-mail dtd 26 Jun 01
(4) HQMC CMT memo dtd 18 Jun 01
(5) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 1 October 1998 to 15 October 1999 (copy at Tab A to enclosure (1).) As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness report. Petitioner further requested removal of his failure of selection by the Fiscal Year (FY) 2001 Active Reserve Lieutenant Colonel Selection Board. After his application had been submitted, he failed of selection by the FY 2002 Active Reserve Lieutenant Colonel Selection Board. His communication at enclosure (3) reflects that he also requests removal of that failure.

2. The Board, consisting of Messrs. McCulloch and Tew and Ms. Gilbert, reviewed Petitioner's allegations of error and injustice on 12 July 2001, 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. Petitioner first failed of selection before the FY 2000 Active Reserve Lieutenant Colonel Selection Board. The contested fitness report was not in his record for that promotion board. It was in his record for the FY 2001 and 2002 boards.

c. In correspondence attached as enclosure (4), the HQMC office having cognizance over the subject matter of Petitioner's case has commented to the effect that his request to remove his FY 2001 failure has merit and warrants favorable action. The opinion does not address the FY 2002 failure.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the requested relief.

The Board agrees with the advisory opinion at enclosure (4) in finding that Petitioner's FY 2001 failure should be removed. They find this advisory opinion equally applicable in supporting removal of the FY 2002 failure.

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

RECOMMENDATION:

a. That Petitioner's record be corrected by removing his failures by the FY 2001 and 2002 Active Reserve Lieutenant Colonel Selection Boards, leaving in his record his failure by the FY 2000 Active Reserve Lieutenant Colonel Selection Board.

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
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

21458-01



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

IN REPLY REFER TO:
1610
MMER
21 Jun 01

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

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED], USMCR

- Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 23 May 01
- (2) CMC Advisory Opinion 1600 CMT of 18 Jun 01
- (3) Copy of CMC ltr 1610 MMER/PERB of 21 Jun 01

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED] official military record, the fitness report for the period 981001 to 991015 (TR).
2. We defer to BCNR on the issue of [REDACTED]'s 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.
3. By enclosure (3), this Headquarters provided [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]

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

4958-01



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

IN REPLY REFER TO:
1610
MMER/PERB
23 MAY 2001

From: Commandant of the Marine Corps

To: [REDACTED] USMC

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 report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
29 Nov 99	[REDACTED]	981001 to 991015 (TR)

2. There will be inserted in your Naval record a memorandum in place of the removed report. The memorandum will contain appropriate identifying data concerning the report and state that it has 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 report or the events which may have precipitated it, 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

4958-01



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

IN REPLY REFER TO:

1600
CMT
18 Jun 01

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

Subj: RESERVE AFFAIRS REVIEW OF FAILURE OF SELECTION ADVISORY
OPINION ON BCNR APPLICATION; CASE OF [REDACTED]
[REDACTED] USMC

Ref: (a) Marine Corps Advisory Opinion MMER/PERB of
23 May 2001
(b) Update Material Log, FY01 USMCR (AR) LtCol Selection
Board

1. Recomme [REDACTED] second failure of selection,
incurred on the FY01 USMCR (AR) Lieutenant Colonel selection
board, be removed from his record.

2. Reference (a) removed a fitness report dated 981001-991015
from [REDACTED] record. Per reference (b), this fitness
report was part of Major Sullivan's record during the FY01
Lieutenant Colonel (AR) selection board. [REDACTED] was
above zone on the FY01 board. The adverse nature of this fitness
report may have caused his record to be less than competitive
when compared to his peers.

3. Point of contact [REDACTED]
[REDACTED]

By direction

George, Brian J

4958 01

From: Sullivan [redacted] [jeune.usmc.mil]
Sent: Tuesday, June 26, 2001 3:53 PM
To: 'george.brian@hq.navy.mil'
Subject: My DD FORM 149 of 7 March 2001

[redacted]
- Sorry for the confusion. Per our conversation [redacted]
intent was to request the removal of the second and third passes, not the
first. Thanks for your help.

V/R
KAS

[redacted]
[redacted] merc [redacted]

"Never do your enemy a minor injury."
[redacted]