



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

BJG  
Docket No: 5326-01  
31 August 2001

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

Subj: MAJ [REDACTED], USMC, [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 3 Dec 00 w/attachments,  
incl Subject's ltr dtd 15 Jun 01  
(2) HQMC PERB memo dtd 29 Jun 01 w/encl  
(3) HQMC MMOA-4 memos dtd 20 Jun and 14 Aug 01  
(4) Memo for record dtd 29 Aug 01  
(5) Maj, USMC e-mail dtd 17 Aug 01  
(6) 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 report for 30 August 1991 to 28 May 1992, a copy of which is in enclosure (1) at Tab A. 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 failures of selection before the Fiscal Year (FY) 1996 and 1997 Major Selection Boards, and adjustment of his major date of rank and effective date to reflect selection by the FY 1996 Major Selection Board. By implication, he requested to have his involuntary discharge from the Regular Marine Corps on 1 January 1997 set aside, so his record will reflect that he served continuously in the Regular Marine Corps after that date.

2. The Board, consisting of Messrs. Carlsen and Rothlein and Ms. Humberd, reviewed Petitioner's allegations of error and injustice on 29 August 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. By reason of Petitioner's failures before the FY 1996 and 1997 Major Selection Boards, he was involuntarily discharged from the Regular Marine Corps on 1 January 1997. He accepted a commission as a captain in the Marine Corps Reserve, and he was promoted to major in the Marine Corps Reserve on 1 May 1997, pursuant to selection by the FY 1998 Reserve Major Selection Board. In December 1998, he was augmented into the Regular Marine Corps as a major. The PERB directed removal of the contested fitness report after he had been promoted and augmented.

c. In correspondence attached as enclosure (3), the HQMC Officer Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), the office having cognizance over the subject matter of Petitioner's request to strike his failures of selection for promotion, has commented to the effect that this request has merit and warrants favorable action.

d. The memorandum for the record at enclosure (4) reflects that HQMC MMOA-4 also recommends approving Petitioner's request for backdating.

e. The e-mail at enclosure (5) shows the HQMC Promotion Branch (MMPR) has advised that had Petitioner been promoted pursuant to selection by the FY 1996 Major Selection Board, he would have been assigned a date of rank and effective date of 1 July 1996.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (3) through (5), the Board finds the existence of an injustice warranting the requested relief.

In light of the input from MMOA-4 and MMPR, the Board finds that Petitioner's record should be corrected to show that he did not fail before the FY 1996 and 1997 Major Selection Boards; that he was not discharged from the Regular Marine Corps on 1 January 1997 by reason of these failures of selection to major, but has served continuously in the Regular Marine Corps; and that he was promoted to major in the Regular Marine Corps, with a date of rank and effective date of 1 July 1996, reflecting selection by the FY 1996 selection board. In this connection, they find he probably would have been promoted pursuant to selection by the FY 1996 selection board, had the later removed fitness report not been in his record. They recognize that he has not been selected by an active duty board for promotion to major, and that the Senate has not confirmed him for promotion, as opposed to augmentation, to the grade of major in the Regular Marine Corps. They are satisfied, nevertheless, that it would be legal for his record to show he was promoted to major in the Regular Marine Corps on 1 July 1996, the date he would have been promoted had he been selected by the FY 1996 selection board. In this regard, they particularly note that this correction would reflect the facts they find ought to have occurred; it would allow Petitioner to retain the status he now has, as a major in the Regular Marine Corps; and it

would be consistent with the backdating of his appointment to that grade to a date before he left the Regular Marine Corps for the Marine Corps Reserve.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing his failures by the FY 1996 and 1997 Major Selection Boards.

b. That his record be corrected further to show that he was not discharged on 1 January 1997, but continued to serve in the Regular Marine Corps after that date.

c. That his record be corrected further to show that he was promoted to major in the Regular Marine Corps, with a date of rank and effective date of 1 July 1996, under title 10, United States Code, chapter 549, and sections 531, 533, and 1552; and that his lineal precedence be adjusted accordingly.

d. That any material or entries 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.


e. 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.

  
For W. DEAN PFEIFFER  
Executive Director

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



IN REPLY REFER TO:

1610  
MMER  
29 Jun 01

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 7 Feb 01
- (2) CMC Advisory Opinion 1610 MMOA-4 of 20 Jun 01
- (3) Copy of CMC ltr 1610 MMER/PERB of 29 Jun 01

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED] official military record, the fitness report for the period 910830 to 920528 (TR).
2. We defer to BCNR on the issue of Major [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.
3. By enclosure (3), this Headquarters provided Maj [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

1610  
MMER/PERB

7 FEB 2001

From: Commandant of the Marine Corps

To: [REDACTED] USMC  
[REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per reference (a), 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>
28 May 92	LtCol [REDACTED]	910830 to 920528 (TR)

2. There will be inserted in your Naval record a memorandum in place of the removed report containing appropriate identifying data concerning said report. The memorandum will state that the report has been removed by order of the Commandant of the Marine Corps and may not be made available to selection boards and other reviewing authorities; that such boards may not conjecture or draw any inference as to the nature of the report. The Automated Fitness Report System will be corrected accordingly.

[REDACTED]

By direction



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

5326-01

IN REPLY REFER TO:

1600  
MMA-4  
20 Jun 01

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

Subj: BCNR PETITION FOR MAJOR [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case  
[REDACTED] USMC  
of 21 Jun 01.

1. Recommend approval of [REDACTED] request for removal of his active duty failures of selection to Major.
2. Per the reference, we reviewed [REDACTED]'s record and his petition. [REDACTED] failed selection on the FY-96 and FY-97 USMC Major Selection Board. Subsequently, he successfully petitioned the Performance Evaluation Review Board for removal of the Transfer fitness report of 910830 to 920528. [REDACTED] requests removal of his failures of selection.
3. In our opinion, the adverse material in the petitioned report did present substantial competitive concern to the record. Therefore, removal of the adverse report enhances the competitiveness of the record. Since the adverse report likely resulted in [REDACTED] failure of selection, we recommend approval of his request for removal of his failures of selection to Major.
4. Point of contact [REDACTED]  
[REDACTED]  
[REDACTED]

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



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

IN REPLY REFER TO:  
1600  
MMOA-4  
14 Aug 01

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

Subj: BCNR PETITION FOR [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case  
of Major [REDACTED] USMC  
of 08 Aug 01.

1. Recommend approval of [REDACTED]'s request for removal of his active duty failures of selection to Major.
2. Per the reference, we reviewed [REDACTED]'s record and his petition. [REDACTED] failed selection on the FY-96 and FY-97 USMC Major Selection Board. Subsequently, he successfully petitioned the Performance Evaluation Review Board for removal of the Transfer fitness report of 910830 to 920528 and was selected to Major on the FY-98 USMCR Major Selection Board. [REDACTED] requests removal of his failures of selection.
3. In our opinion, the adverse material in the petitioned report did present substantial competitive concern to the record. Therefore, removal of the adverse report enhances the competitiveness of the record. Since the adverse report likely resulted in [REDACTED]'s failures of selection, we recommend approval of his request for removal of his failures of selection to Major.
4. Point of contact is [REDACTED].

[REDACTED]

Colonel, U.S. Marine Corps  
Head, Officer Assignment Branch  
Personnel Management Division