



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

BJG
Docket No: 5411-01
29 August 2001

MA [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Major [REDACTED]

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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 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 10 July 2001, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 25 July 2001, copies of which are attached. They also considered your rebuttal letters dated 19 July and 8 August 2001 with enclosure.

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 substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should stand. Since they found no defect in your performance record, they had no basis to strike your failure by the Fiscal Year 2002 Lieutenant Colonel Selection Board or to recommend granting you "promotion reconsideration." In view of the above, your application 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

Enclosures



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

IN REPLY REFER TO:
1610
MMER/PERB
10 JUL 2001

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

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 24 Apr 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 3 July 2001 to consider Major [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 981231 to 990731 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is neither a fair nor accurate assessment of his performance. It is his belief the report conveys the impression that he did not perform to the standards expected of a Major and renders his service in grade less than competitive for promotion. To support his appeal, the petitioner furnishes letters from the Reporting Senior and Reviewing Officer of record.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Notwithstanding the advocacy letters from Colonel Johnson and Lieutenant Colonel [REDACTED] there is no substantiation that the grades and comments on the challenged fitness report reflect anything other than actual performance. This is a performance appraisal certified by the Reporting Senior as "true and without prejudice or partiality" (Section J1) and concurred in by the Reviewing Officer with "sufficient" observation (Section K1).

b. In his letter, Colonel [REDACTED] is vague in implying the report was, at least from his perspective, prepared based "on early Command guidance on the new PES." That matter notwithstanding, any fitness report should be prepared per the applicable directive. What is significant is that Colonel

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

[REDACTED] current assessment of the performance recorded in the challenged fitness report is based "on subsequent favorable observation." In this regard, the Board stresses that any fitness report documents performance and accomplishments during that finite period, and not on what subsequently occurred.

c. Lieutenant Colonel [REDACTED] letter merely reinforces the honesty and fairness of his evaluation, and that it was in strict compliance with reference (b). Regardless of the perceived competitiveness of the report, it is not adverse and the Board discerns absolutely no injustice.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
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

IN REPLY REFER TO:
1600
MMOA-4
25 Jul 01

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

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

Ref: (a) MMER Request for Advisory Opinion in the case of
[REDACTED]
USMC of 18 Jul 01

1. Recommend disapproval of [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed [REDACTED]'s record and petition. Major [REDACTED] failed selection on the FY-02 USMC Lieutenant Colonel Selection Board. Subsequently, the Performance Evaluation Review Board (PERB) denied his request for removal of the Annual fitness report of 981231 to 990731. Major [REDACTED] requests removal of his failure of selection.
3. In our opinion, Major [REDACTED]'s record, as it appeared before the boards, was complete, accurate, and provided a fair assessment of his performance. Had the petitioned report been removed, the record would have been more competitive, but not enough to warrant removal of the failure of selection. Since the unfavorable PERB action did not change the competitiveness of the record, we recommend disapproval of Major [REDACTED] request for removal of his failure of selection.
4. POC : [REDACTED]

[REDACTED]

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