



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

BJG
Docket No: 5598-01
4 October 2001

LTCOL [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Colo [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.

Your request for a special selection board was not considered, as you have been selected by the Fiscal Year (FY) 2002 Reserve Lieutenant Colonel Selection Board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 October 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) in your case, dated 13 July 2001, and the advisory opinion from the HQMC Career Management Team, dated 28 August 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 substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should stand. They found that when you had the chance to make a rebuttal, you could have submitted one at least as effective as your statement in support of your petition. They were unable to find that the reporting senior erred by marking block 18 to reflect the report was based on "daily" observation, noting that observation need not be direct. As they found no defect in your performance record, they had no grounds to remove your failure by the FY 2001 Reserve Lieutenant Colonel Selection Board, or to adjust your lieutenant colonel date of rank and effective date to reflect selection by the FY 2001 Reserve Lieutenant Colonel Selection Board. 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
13 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] USMCR

Ref: (a) Maj [REDACTED] DD Form 149 of 1 Mar 01
(b) MCO P1610.7D w/Ch 1

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 960101 to 960630 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report fails to comply with the procedural requirements for an adverse fitness report and that neither the markings in Section B nor the comments in Section C are supported by fact. To support her appeal, the petitioner furnishes the following: her own detailed statement; copies of Leave and Earnings Statements; copies of prior fitness reports from the 4th Civil Affairs Group; documentation of Civil Affairs Officer Advanced Course, Phase I, Course Work; Modification of Orders with travel documents; and a copy of the challenged fitness report.

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. The Board concedes the Reporting Senior and Reviewing Officer should have required the petitioner to sign Item 24 of the report prior to its submission to this Headquarters. However, the significant fact is that the petitioner was afforded an opportunity to respond to the adverse nature of the evaluation prior to its incorporation into her official record. This is acknowledged in Section I, paragraph eleven, of the petitioner's statement appended to reference (a). She obviously opted to forego following through with that action and is responsible for her own decision. In this regard, we emphasize

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that reference (b) specifically states the appeal system is not a substitute for proper resolution of an adverse fitness report.

b. Had the petitioner surfaced the issues in an official rebuttal that she now raises in reference (a), all parties involved in the official reporting chain could have taken action to resolve and adjudicate factual differences. To wait almost five years, and when the issues presented are from a single perspective, lacks both timeliness and a certain amount of credibility.

c. Not withstanding the documentation furnished with reference (a), the Board finds no substance to the petitioner's argument that the markings in Section B and the comments in Section C are not factually supported. The Reporting Senior was definitive and concise in identifying those areas in which the petitioner was lacking. Since there were no factual differences to resolve, the Reviewing Officer was not required to add any commentary.

d. The petitioner is correct that no sighting by a General Officer occurred. However, following her failure to respond to official correspondence, in which she was afforded an opportunity to provide a rebuttal statement, the report was administratively third sighted at this Headquarters. Again, since there was nothing to resolve, an administrative review was appropriate in this situation and complies with both the spirit and intent of reference (b).

e. The Board concludes that whatever administrative and procedural errors may have occurred at the petitioner's command in connection with submission of the fitness report were rectified by this Headquarters. Additionally, those errors do not negate the adversity of the recorded performance.

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

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMCR

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:
1610
CMT
28 Aug 01

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

Subj: REQUEST FOR ADVISORY OPINION ON BCNR APPLICATION;
CASE OF MAJOR [REDACTED] USMCR

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

1. Per reference (a), we have reviewed [REDACTED]'s record to determine her competitiveness for selection to lieutenant colonel should the challenged report be removed by the BCNR. In our opinion, Major [REDACTED] record, without the fitness report for the period 960101 to 960630, would be competitive with the majority of her peers based on the following:

2. Major [REDACTED] fitness reports share many traits with those of other officers who served throughout the 1980's and 1990's, when the new report was instituted. In particular, [REDACTED] was ranked "Outstanding" in General Value to the Service on 15 of 26 observed reports. Her last two reports under the old system contain nothing less than "Outstanding" remarks in Section B. Her reports under the new system contain only very high markings of "D", "E", "F", and "G". Under the old reporting system, she does show significant trends (markings of less than Outstanding on 20% or more reports) in Administrative Duties, Training Personnel, Attention to Duty, Judgment, and Economy of Management. When reported on at the same time as her peers, Major [REDACTED] ranks with the majority of her peers with 1 Marine ranked above her, 19 with her, and 2 below her throughout her career. Reviewing Officer comments from reports as a major include "...strongly recommended for promotion to LtCol.", "Enthusiastically recommended for promotion.", and "Promote now.". Her record contains a possible date gap in excess of 45 days with no admin filler early in her career from 01 Jan 1987 to 19 Oct 1987.

3. [REDACTED] has completed the appropriate professional military education for her grade, Command and Staff, as well as Amphibious Warfare School. She has been awarded a Navy and Marine Corps Commendation Medal, two SMCR Medals, and an Armed Forces Reserve Medal, among other service medals and ribbons.

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CASE OF [REDACTED] USMCR

She is in receipt of five Letters of Appreciation, one Certificate of Appreciation, and 1 Certificate of Commendation. Major [REDACTED] effected a lateral move to the intelligence field and has been serving in this field since 1996. Her record indicates extensive participation in the Marine Corps Reserve at various units. Her most recent fitness report indicates a first class PFT score.

4. Point of contact [REDACTED]

[REDACTED]

By direction