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

BJG
Docket No: 7671-01
21 December 2001

CA [REDACTED] MCR
[REDACTED]

Dear Captain [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. You requested that your captain date of rank and effective date be adjusted to 1 January 1999, to reflect selection by the Fiscal Year (FY) 1999 Captain Selection Board, vice the FY 2001 Captain Selection Board. You also requested, by implication, removal of documentation of the delay of your promotion and your removal from the FY 1999 Captain Selection Board promotion list.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 December 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 undated advisory opinion furnished by Headquarters Marine Corps, a copy of which is 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 advisory opinion in concluding that your promotion should not be backdated, and that the documentation in question should remain in your record. While the Commandant of the Marine Corps memorandum for the Secretary of the Navy dated 31 December 1998, recommending your removal from the promotion list, did mention that you received a nonpunitive letter, it did not indicate that the letter itself was the basis for the removal. 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

Enclosure

MMPR COMMENT on MMER route sheet dated 18 Oct 01

Subj: PERFORMANCE EVALUATION REVIEW BOARD ON CAPTAIN
[REDACTED] USMC

Ref: (a) SECNAVINST 1401.1B

1. The Performance Evaluation Review Board requested an advisory opinion in the case of Captain [REDACTED]. Captain [REDACTED] is requesting a date of rank adjustment to 990101 and a special selection board.

2. The following facts are germane to the case:

a. Captain [REDACTED] was selected for Captain by the FY99 USMC Captain Promotion Selection Board. His selection was removed by the Secretary of the Navy (SECNAV). Due to his withhold status he was not eligible for the FY00 USMC Captain Promotion Selection Board. By law an officer may not be considered for promotion to the next higher grade if that officer's name is on a promotion list as a result of a recommendation for promotion by an earlier board.

b. Captain [REDACTED] was selected as an above zone officer by the FY01 USMC Captain Promotion Selection Board. His date of rank is 000701.

c. Captain [REDACTED] contention is that the non-punitive letter of reprimand he received was used punitively and resulted in his removal. This is not the case. Although all disciplinary and administrative proceedings were completed in regards to his case, there remained concern regarding his suitability for promotion. Consequently, after careful consideration of all the facts, The Secretary of the Navy decided that Captain [REDACTED] was not suitable for promotion due to the nature of the multiple infractions of the Uniform Code of Military Justice, not the non-punitive letter of reprimand he received as a direct result of his offenses.

d. Reference (a) states the SECNAV is authorized to convene a special selection board to consider cases of "officers who were in or above the promotion zone before a promotion selection board, but not selected, if SECNAV determines that the action of that board was contrary to law, or involved material error of fact or material administrative error, or that the board lacked some material information for consideration."

① suitability

Subj: PERFORMANCE EVALUATION REVIEW BOARD ON CAPTAIN
[REDACTED] USMC

e. Captain [REDACTED] requested a special selection board to the grade of Captain. Since he was selected by the FY01 board and promoted to Captain on 000701 he no longer meets the criteria for a special selection board to that grade. If Captain [REDACTED] date of rank adjustment is approved it would be 990101.

3. Point of contact in this matter is Chief Warrant Officer
[REDACTED]

[REDACTED]

Head Officer Promotion Section