



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

BJG  
Docket No: 4934-02  
12 September 2002

2

MAJ [REDACTED] USMC

Dear [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 the "AA" ("above average") mark for item 14g ("judgment") in your fitness report for 1 November 1989 to 31 October 1990 be removed, and that you be granted a remedial selection board as an officer not having failed of selection to lieutenant colonel.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 September 2002. 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 21 May 2002, and the advisory opinion from the HQMC Officer Counseling and Evaluation Section, Personnel Management Division, dated 13 June 2002, copies of which are attached. They also considered your rebuttal letters dated 4 June and 16 July 2002.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice. In this connection, they substantially concurred with the report of the PERB in concluding that the contested mark should stand. They found that subparagraph (d)(2)(B)(i) of the Privacy Act, title 10, United States Code, section 552a, does permit the individual to request amendment of a record pertaining to him or her "which the individual believes is not accurate, relevant, timely, or complete"; however, they found nothing in the Privacy Act to the effect that the individual has a right to make a rebuttal statement concerning such a record. Since the Board found no defect in your performance record, they had no basis to recommend granting you remedial consideration for promotion. 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

4934-07

IN REPLY REFER TO:  
1610  
MMER/PERB  
MAY 21 2002

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 12 Mar 02  
(b) MCO P1610.7C w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 May 2002 to consider Major [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 891101 to 901031 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the "above average" mark in Item 14g (judgment) is, in reality, adverse and synonymous with a mark of "no" in Item 19 (qualified for promotion). It is his contention that assignment of said mark required referral of the report to him for acknowledgement and the opportunity to respond.

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 petitioner's assertions and arguments, and contrary to his beliefs, a mark of "above average" in Item 14g, or any other mark in Items 13 and 14 of Section B of the report, is not categorized as "adverse." Additionally, such marks require no specific justification or comments. Succinctly stated, the petitioner's contention is without merit.

b. There has been nothing furnished with reference (a) to show that anything in the challenged report is inaccurate or unwarranted or that the petitioner somehow rated more than what has been recorded. We also emphasize that while a particular mark or report may be viewed as reducing competitiveness, the adversity of any report is in the recorded performance, not in perceived promotability.

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

- 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

4934-01

IN REPLY REFER TO:

1600  
MMAA-4  
13 Jun 02

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

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

Ref: (a) BCNR Request for Advisory Opinion in the case  
of [REDACTED]  
USMC of 4 Jun 02

1. Recommend disapproval of [REDACTED] request for removal of his failure of selection.
2. [REDACTED] failed selection on the FY02 and FY03 USMC Lieutenant Colonel Selection Boards. Subsequently, the Performance Evaluation Review Board (PERB) denied his request for removal of the Annual fitness report from 891101 to 901031.
3. In our opinion, [REDACTED]'s record, as it appeared before the board, 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 so to warrant removal of the failures of selection. His broken time and markings of "excellent" in items 13 and 14 on the reports both before and after petitioned report would remain competitive concerns. Since the unfavorable PERB action did not change the competitiveness of the record, we recommend disapproval of [REDACTED] request for removal of his failure of selection.

4. POC is Lie [REDACTED]  
[REDACTED]

[REDACTED]

Lieutenant Colonel, USMC  
Head, Officer Counseling and  
Evaluation Section  
Personnel Management Division