



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

BJG
Docket No: 6620-00
9 February 2001

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

Subj: CAPT [REDACTED], USMCR, [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Forms 149 (3) dtd 25, 26 and 27 Sep 00 w/attachments
(2) BCNR file, docket no 2303-99
(3) HQMC MMOA-4 memo dtd 6 Nov 00
(4) Subject's ltr dtd 15 Jan 01
(5) 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 his failure of selection before the Fiscal Year (FY) 1999 Captain Selection Board; returning him to the Regular Marine Corps effective 1 November 1999; and changing the date of rank and effective date of his promotion to captain to reflect selection by the FY 1999 Captain Selection Board, vice the special selection board (SSB) he received for the FY 2000 Captain Selection Board. Finally, he requested return of his sold accrued leave. The corrective action indicated below will require that his sold accrued leave be returned, together with recoupment of payments he received when he sold the leave.

2. The Board, consisting of Messrs. Kastner, Lippolis, and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 1 February 2001, and pursuant to its regulations, determined that the limited 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. Petitioner had a previous case before this Board, the file for which is at enclosure (2). Before they received this case, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) had directed removal of the reviewing officer's comments

from his fitness reports for 1 February to 30 May 1997 and 31 May to 30 November 1997. When this Board reviewed his previous case on 23 March 2000, they did not consider his requests to remove his failures by the FY 1999 and 2000 Captain Selection Boards and set aside action to effect his involuntary discharge from the Regular Marine Corps, because they believed that as a result of his promotion by means of his SSB, his failures of selection had been removed administratively, and action to effect his discharge had been set aside. In fact, because the SSB was for the FY 2000 Captain Selection Board, only the FY 2000 failure was removed administratively; further, before this failure was removed, Petitioner was discharged from the Regular Marine Corps on 1 November 1999 by reason of having twice failed of selection to captain. He took a commission in the Marine Corps Reserve without a break in service, and he executed orders to perform active duty for special work. He received his promotion to captain after having been discharged from the Regular Marine Corps.

c. The next to last document at enclosure (2) is an advisory opinion provided by the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 29 March 1999, which commented to the effect that Petitioner's request to remove his failure by the FY 1999 Captain Selection Board should be denied, notwithstanding the corrective action directed by PERB.

d. In correspondence attached as enclosure (3), the HQMC MMOA-4 adhered to their opinion of 29 March 1999, and they recommended denying Petitioner's current request to backdate his promotion to reflect an FY 1999 selection. In this regard, they commented to the effect that the two missing items for which he was granted an SSB (certificate for a warfighting skills course completed on 25 January 1999 and a fitness report for 1 July 1998 to 11 January 1999) could not be considered to have been missing for the FY 1999 promotion board, which convened on 3 March 1998.

e. In his letter at enclosure (4), Petitioner noted that the two sets of reviewing officer comments removed by PERB had been seen by the FY 1999 Captain Selection Board; and he argued that absent the comments, his record would have been competitive.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting limited relief.

The Board finds that Petitioner must be restored to active duty in the Regular Marine Corps, because his discharge was based in part on his failure by the FY 2000 Captain Selection Board which has been removed. The Board further finds that his failure by the FY 1999 Captain Selection Board should stand, and that his promotion should not be backdated. In this regard, they substantially concur with the two MMOA-4 advisory opinions discussed above in concluding that his selection by the FY 1999 Captain Selection Board would have been definitely unlikely, even if his record had not included the later removed reviewing officer comments; and that the basis for the SSB did not apply to the FY 1999 board.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged from the Regular Marine Corps on 1 November 1999, but served continuously in the Regular Marine Corps after that date; and that he be reinstated to active duty in the Regular Marine Corps accordingly.

b. That his record be corrected further to show his promotion to captain was in the Regular Marine Corps, rather than the Marine Corps Reserve. --

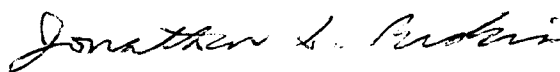
c. That any material or entries relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. 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.

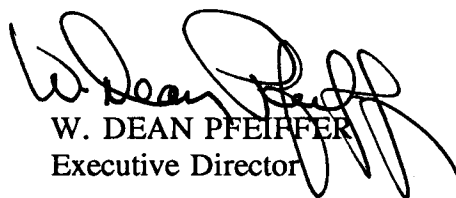
e. That the remainder of Petitioner's request be denied.

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
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.


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:
1600
MMAA-4
29 Mar 99

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

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

Ref: (a) MMER Request for Advisory Opinion in the case of
First Lieutenant [REDACTED]
USMC of 26 Mar 99

1. Recommend disapproval of First Lieutenant [REDACTED]'s request
for removal of his failure of selection.

2. Per the reference, we reviewed First Lieutenant [REDACTED]
record and petition. First Lieutenant [REDACTED] failed selection
on the FY99 USMC Captain Selection Board. He successfully
petitioned the Performance Evaluation Review Branch to remove
the Reviewing Officer comments from the Grade Change fitness
report of 970201 to 970530 and the Transfer fitness report of
970531 to 971130. However, his petition to remove the Reviewing
Officer comments from the Semi-Annual fitness report of
960615 to 970131 and the Temporary Duty fitness report of 971202
to 980303 was denied. First Lieutenant [REDACTED] requests
removal of his failure of selection.

3. In our opinion, the petitioned report's Reviewing Officer
comments do present some jeopardy to the record. However, we
believe the following areas of competitive concern most likely
would have resulted in his failure of selection even with the
petitioned comments removed from the record:

a. **Value and Distribution.** First Lieutenant [REDACTED]
overall Value and Distribution contains nine officers ranked
above him and three below.

b. **Section B marks.** First Lieutenant [REDACTED] record
contains less competitive Section B trends in Administrative
Duties and Force.

c. **Professional Military Education (PME).** First Lieutenant
[REDACTED] has not completed the requisite PME for his grade per
MCO 1553.4.

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

d. **The Basic School Class Standing.** First Lieutenant [REDACTED] finished 228 of 230 in his Basic School class.

4. In summary, the petitioned reports do present *some* jeopardy to the record. However, we believe there would remain sufficient competitive concern in the record even *with* the Reviewing Officer comments removed from the petitioned reports. Therefore, we recommend disapproval of First Lieutenant [REDACTED]'s request for removal of his failure of selection.

[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
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IN REPLY REFER TO:
1600
MMOA-4
6 Nov 00

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

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

- Ref: (a) MMER Request for Advisory Opinion in the case of Captain [REDACTED] USMC of 2 Nov 00
- (b) MMOA-4 Advisory Opinion 1600 MMOA-4 of 29 Mar 99
- (c) MMOA-4 Advisory Opinion 1600 MMOA-4 of 2 Sep 99

1. Recommend disapproval of Captain [REDACTED]'s request for removal of his failure of selection and backdating his date of rank (DOR).

2. Per reference (a), we reviewed Captain [REDACTED]'s record and petition. Captain [REDACTED] failed selection on the FY99 and FY00 USMC Captain Selection Boards. References (b) and (c) recommend disapproval of Captain [REDACTED]'s petitions to remove his failures of selection. Subsequently, Captain [REDACTED] was selected by a Special Selection Board (SSB) and promoted. Captain [REDACTED] requests removal of his FY-99 failure of selection and backdating his DOR.

3. Our opinion in references (b) and (c) remain germane. Captain [REDACTED] was granted a SSB because of material error: missing Warfighting Sills Certificate and the Transfer report of 980701 to 990111. Neither of these documents would have been viewed by the FY99 Board which convened on 980303. We, therefore, recommend disapproval of his request for removal of his failure of selection and backdating his DOR.

4. Point of contact [REDACTED] 991 [REDACTED]

[REDACTED]

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