



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

BJG
Docket No: 9420-02
4 December 2002

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

Subj: CAPT [REDACTED] USMCR
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 22 Oct 02 w/attachments
(2) HQMC MMOA-4 memo dtd 21 Nov 02
(3) 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 to show the lineal position, date of rank, and effective date in the grade of captain he would have been assigned had he been selected for promotion to that grade by the Fiscal Year (FY) 2002 Captain Selection Board, vice the FY 2003 Captain Selection Board.
2. The Board, consisting of Messrs. Taylor, Tew and Zsalman, reviewed Petitioner's allegations of error and injustice on 4 December 2002, and pursuant to its regulations, determined that the 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. In Petitioner's prior case, docket number 8231-01 (decisional document at Tab A to enclosure (1)), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing a fitness report, and this Board directed removing his failure of selection by the FY 2002 Captain Selection Board. He was selected by the FY 2003 Captain Selection Board with a corrected fitness report record and status as not having failed of selection. He was promoted to captain with a date of rank and effective date of 1 October 2002.

c. In correspondence attached as enclosure (2), the HQMC office with cognizance over the subject matter of this case has commented to the effect that Petitioner's request has merit and warrants favorable action. They stated that if he had been promoted pursuant to selection by the FY 2002 Captain Selection Board, he would have been assigned a date of rank and effective date of 1 January 2002.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:


a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of captain as 1 January 2002, vice 1 October 2002; and that his lineal precedence be adjusted accordingly.

b. That any material or entries inconsistent with or 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.


c. 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.

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.


For W. DEAN PFEIFFER
Executive Director

9420-02



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

IN REPLY REFER TO:
1600
MMAA-4
21 Nov 02

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

Subj: BCNR PETITION FOR CAPTAIN [REDACTED] 02
USMC

Ref: (a) BCNR Request for Advisory Opinion in the case of
[REDACTED]
of 14 NOV 02.

1. Recommend approval of [REDACTED] request for
backdating.

2. Per the reference, we reviewed Cap [REDACTED] record and
petition. Cap [REDACTED] failed selection on the FY02 USMC
Captain Selection Board. He successfully petitioned the
Performance Evaluation Review Board (PERB) to remove the
Transfer fitness report from 990908 to 991113. Cap [REDACTED] was
subsequently selected for promotion from the In-Zone on the FY03
USMC Captain Selection Board. Cap [REDACTED] requests backdating
of his date of rank in keeping with selection on the FY02 Board.

3. In our opinion, the petitioned report contained serious
competitive concerns that may have resulted in the failure of
selection. Removal of the report increased the competitiveness
of his record. Since the removed report likely resulted in
Cap [REDACTED] failure of selection, and following the removal
he was selected for promotion to Captain, we recommend approval
of his request for back-dating of his date of rank to 1 January
2002. This date was verified by Jane Ritchie of MMPR.

4. POC [REDACTED] [REDACTED] at [REDACTED]

[REDACTED]

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