



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

BJG
Docket No: 5561-03
6 August 2003

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

Subj: M [REDACTED] USMC [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 23 Apr 03 w/attachment
(2) HQMC MMER memo dtd 26 Jun 03 w/encl
(3) HQMC MMOA-4 memo dtd 14 May 03
(4) 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 the fitness reports for 1 February to 19 May 1989, and 1 July 1989 to 16 January 1990, copies of which are in enclosure (1) at Tabs A and B, respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness reports. Petitioner further requested removal of his failure of selection before the Fiscal Year 2004 Lieutenant Colonel Selection Board, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of lieutenant colonel as an officer who has not failed of selection to that grade.
2. The Board, consisting of Messrs. Bishop, Neuschafer and Schultz, reviewed Petitioner's allegations of error and injustice on 31 July 2003, 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 correspondence attached as enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

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
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
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:
1610
MMER
26 Jun 03

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

Subj: BCNR APPLICATION IN THE CASE OF MAJOR [REDACTED]
[REDACTED] SMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 26 Jun 03
(2) CMC Advisory Opinion 1610 MMOA-4 of 14 May 03

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED] official military record, the fitness reports for the periods 890201 to 890519 (GC) and 890701 to 900116 (CH).
2. We defer to BCNR on the issue of Major [REDACTED] request for the removal of his failure of selection to the grade of Lieutenant Colonel. Enclosure (2) is furnished to assist in resolving that matter.
3. Please note that enclosure (1) transmitted a copy of enclosure (2) to [REDACTED].

[REDACTED]

DAVID J. HAYMAN
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps



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IN REPLY REFER TO:
1610
MMER/PERB
JUN 26 2003

From: Commandant of the Marine Corps
To: M [REDACTED] MC

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

Encl: (1) CMC Advisory Opinion 1600 MMOA-4 of 14 May 03

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your naval record. Having reviewed all the facts of record, the Board has directed that your naval record will be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
19 May 89	Capt [REDACTED]	890201 to 890519 (GC)
16 Jan 90	Capt [REDACTED]	890701 to 900116 (CH)

2. There will be inserted in your naval record a memorandum in place of the removed reports. The memorandum will contain appropriate identifying data concerning the reports and state that they have been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the reports or the events which may have precipitated them, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that



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ESG1-03

IN REPLY REFER TO:

1600
MMA-4
14 May 03

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

Subj: BCNR PETITION FOR [REDACTED]
USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
[REDACTED] USMC
of 07 May 03.

1. Recommend approval of [REDACTED] request for removal of his failure of selection if at least one of the petitioned reports is removed from his record.
2. Per the reference, we reviewed [REDACTED] record and petition [REDACTED] failed selection on the FY04 USMC Lieutenant Colonel Selection Board. [REDACTED] requests removal of the GC report from 890201 to 890519 and the CH report 890701 to 900116. He also requests his removal of his failure of selection.
3. In our opinion, the petitioned fitness reports contain competitive concerns that may have resulted in the failure of selection. The removal of both reports would significantly increase the competitiveness of [REDACTED]'s record. The removal of either single report would also increase the competitiveness, but to a lesser degree. Therefore, we recommend approval of his request for removal of the failure of selection if either or both of the petitioned reports are removed from his record.
4. POC [REDACTED]

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