



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

BJG
Docket No: 6373-06
28 September 2006

[REDACTED]

[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 modifying the fitness reports for 1 June to 1 September 2000 and 2 September 2000 to 5 March 2001 by removing section K (reviewing officer (RO) marks and comments). You also requested that the fitness report for 20 December 2003 to 31 May 2004 be modified by removing the mark in section K.3 (RO's "Comparative Assessment") or raising it, in accordance with the RO's letter dated 16 March 2006, from the sixth best of eight possible marks to the fifth best. Finally, you requested removing your failure of selection by the Fiscal Year (FY) 2007 Major Selection Board.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested section K of the fitness report for 1 June to 1 September 2000 by removing, from section K.4 ("[RO] Comments") "Developing slightly behind peers."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 September 2006. 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 11 July 2006, and the advisory opinion from the HQMC Officer Counseling Section, Personnel Management Division (MMOA-4), dated 31 July 2006, copies of which are attached. The Board also considered your rebuttal letter dated 15 September 2006 with enclosures.

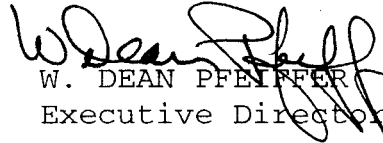
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Specifically concerning the contested section K of the fitness report for 2 September 2000 to 5 March 2001, the Board found the mark in section K.3, the second lowest of eight possible marks, did not require marking section K.2 ("Evaluation") "Do Not Concur [with reporting senior]." The Board substantially concurred with the advisory opinion from MMOA-4 in concluding your selection by the FY 2007 Major Selection Board would have been definitely unlikely, even if the correction directed by CMC had been effected. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

Although the Board voted not to modify section K.3 of the report for 20 December 2003 to 31 May 2004, you may submit the RO letter of 16 March 2006 to future selection boards.

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

IN REPLY REFER TO:

1610

MMER/PERB

JUL 11 2006

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
[REDACTED]

Ref: (a) [REDACTED]'s DD Form 149 of 17 Mar 06
(b) MCO P1610.7E w/Ch 1-9

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 5 July 2006 to consider [REDACTED]'s petition contained in reference (a). Modification of his fitness reports covering the periods 20000601 to 20000901 (GC), 20000902 to 20010305 (CH), and 20031220 to 20040531 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report covering the period 20000601 to 20000901 (GC) is unfair because the reviewing officer's comments can be construed as adverse. He also contends the report covering the period 20000902 to 20010305 (CH) is inaccurate because the reviewing officer did not have sufficient time to observe his performance during the reporting period. Finally, he contends the reviewing officer's comparative assessment marking on the report covering the period 20031220 to 20040531 (AN) is incorrect. The petitioner contends it was not the reviewing officer's intent to mark him as the worst captain he had observed. To support his request, he submits an advocacy letter from the reviewing officer.

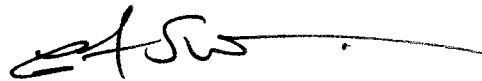
3. In its proceedings, the Board concluded that the reports covering the periods 20000902 to 20010305 (CH) and 20031220 to 20040531 (AN) are administratively correct and procedurally complete as written and filed. The report covering the period 20000601 to 20000901 (GC) is administratively incorrect. The following is offered as relevant:

a. Regarding the report covering the period 20000601 to 20000901 (GC), the Board found the first sentence of the reviewing officer's comments, "Developing slightly

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports, covering the periods 20000902 to 20010305 (CH) and 20031220 to 20040531 (AN), should remain a part of [REDACTED]'s official military record as currently filed. The Board also directed that the report covering the period 20000601 to 20000901 (GC) be modified as directed in paragraph 3(a) of this letter.

5. The case is forwarded for final action.



C. F. SWAIN
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, VA 22134-5103

IN REPLY REFER TO:
1600
MMA-4
31 Jul 06

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

Subj: BCNR PETITION FOR [REDACTED]

Ref: (a) MMR Request for Advisory Opinion in the case of
[REDACTED] USMC

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

2. Per the reference, we reviewed [REDACTED]'s record and petition. [REDACTED] failed selection on the FY07 USMC Major Selection Board. He subsequently petitioned the Performance Evaluation Review Board (PERB) to modify fitness reports 20000601 to 20000901 (GC), 20000902 to 20010305 (CH), and 20031220 to 20040531 (AN). The PERB granted relief of only report 20000601 to 20000901 (GC), in that the sentence "Developing slightly behind peers", section K.4, be removed. [REDACTED] then requested removal of his failure of selection.

3. In our opinion, although the relief granted by the PERB did slightly improve the competitiveness of [REDACTED]'s record, it does not warrant removal of his failure of selection. We believe that [REDACTED] most likely failed selection in FY07 because his record was not as competitive as his peers. His record indicates marginal MOS credibility as a captain, having been in the Fleet Marine Force (FMF) for only eight months before beginning post-graduate education. Also, [REDACTED]'s record indicates below average Reviewing Officer (RO) assessment for seven out of twelve fitness reports where the RO had sufficient observation of his performance. Four out of those seven marks remain at the bottom of the RO's profile. Another detractor to [REDACTED]'s record is that he currently possesses no combat experience. Based upon the above assessment we recommend disapproval of [REDACTED]'s request for removal of his failure of selection.

4. POC [REDACTED]

J. M. MORRISROE
Lieutenant Colonel, USMC
Head, Officer Counseling Section
Personnel Management Division