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

JSR
Docket No: 7411-08
14 August 2008

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

Subj: [redacted]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 18 Apr 08
(2) HQMC MMER/PERB memo dtd 26 Jun 08
(3) HQMC MMOA-4 memo dtd 14 Jul 08
(4) Subject's ltr dtd 13 Aug 08
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by modifying the fitness report for 1 June 2006 to 30 June 2007 (copy at Tab A) by raising the mark in section K.3 (reviewing officer's "Comparative Assessment") from the fifth best of eight possible marks to the fourth best. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board has directed this relief. He further requested removing his failure of selection for promotion before the Fiscal Year (FY) 2009 Lieutenant Colonel Selection Board, so as to be considered by the selection board next 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.

2. The Board, consisting of Ms. Humphrey and Messrs. W. Hicks and Swarens, reviewed Petitioner's allegations of error and injustice on 14 August 2008, 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. In correspondence at enclosure (3), MMOA-4, the HQMC office with cognizance over the subject matter of Petitioner's case, has commented to the effect his request to remove his failure of selection to lieutenant colonel should be denied, even though the correction to his record marginally enhances its strength, as he has not held an operational billet in his primary MOS (military occupational specialty) for more than six years, so he "has no observed time in the operating forces in his current grade." MMOA-4 concludes this makes it highly unlikely that he would have been selected if his fitness report had been corrected before the FY 2009 Lieutenant Colonel Selection Board considered him.

d. Enclosure (4) is Petitioner's response to the advisory opinion from MMOA-4, stating he is aware of other officers selected by the FY 2009 Lieutenant Colonel Selection Board whose career paths were similar to his. He asserted that the downward trend in his reviewing officer marking would have disadvantaged him, and he reiterated his request to restore him to status as an officer who has not failed of selection for promotion.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (3), the Board finds an injustice warranting removal of Petitioner's failure of selection to lieutenant colonel. In this regard, the Board declines to engage in speculation as to whether he might have been selected for promotion, had he enjoyed the benefit of a corrected fitness report record. Further, the Board notes that promotion boards ought not to hold against an officer that officer's not having had a particular type of duty assignment. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval 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 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. 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.

Jonathan S. Ruskin

ROBERT D. ZSALMAN
Recorder

JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

W. Dean Pfeiffer

W. DEAN PFEIFFER

Reviewed and approved:

Robert D. Zsalman

8-25-08