



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

JSR
Docket No. 8949-08
14 November 2008

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 31 May 08 w/attachments
and [REDACTED] ltr dtd 24 Jul 08
(2) HQMC/PERB memo dtd 9 Sep 08
(3) HQMC MMOA-4 memo dtd 12 Sep 08
(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 that his naval record be corrected by removing the fitness report for 1 June to 11 August 2000 (copy at Tab A) and modifying the fitness report for 1 June 2005 to 13 January 2006 (copy at Tab B), in accordance with the reporting senior's letters of 31 May and 24 July 2008 (both at enclosure (1)), by raising the mark in section E.3 ("Initiative") from "E" (third best of seven possible marks) to "F" (second best) and adding the justification provided in the letter of 24 July 2008, and raising the mark in section F.3 ("Setting the Example") from "D" (fourth best) to "E." As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed all the requested modifications of the report for 1 June 2005 to 13 January 2006. Petitioner further requested removal of his failure of selection before the Fiscal Year (FY) 2009 Lieutenant Colonel Selection Board, so as to be considered by the selection board that next convened 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 Ms. Nofziger and Messrs. Boyd and Washington, reviewed Petitioner's allegations of error and injustice on 14 November 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 available under existing law and regulations within the Department of the Navy.

b. Enclosure (2), the report of the PERB, directed all the requested modifications of the report for 1 June 2005 to 13 January 2006, but commented to the effect the report for 1 June to 11 August 2000 should stand.

c. In enclosure (3), the HQMC office with cognizance over the subject matter concerned commented to the effect that the PERB action warranted removing Petitioner's failure of selection by the FY 2009 Lieutenant Colonel Selection Board.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting the following limited 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.

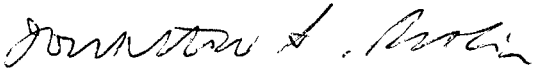
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

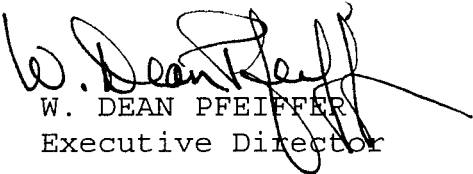
d. That the remainder of Petitioner's request be denied.

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