DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 4313-98
23 April 1999

CAP[redacted]USMCR
[redacted]

Dear Captai[redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of your contested fitness report for 18 October 1988 to 31 January 1989.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 April 1999. 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 1 June 1998, the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 26 May 1998, the memorandum for the record dated 30 November 1998, and the advisory opinion from the Reserve Career Counselor, Career Management Team, Personnel Management Branch, Reserve Affairs Division (RAM 6), dated 10 March 1999, copies of which are attached. They also considered your letters dated 7 July 1998, 29 July 1998 with enclosures, 23 February 1999 with enclosures, 21 March 1999, 12 April 1999 with enclosures, and 19 April 1999. Finally, they considered the Marine Corps Reserve major's letter dated 11 April 1999, the retired Air Force Reserve lieutenant colonel's letter dated 11 April 1999, your fellow Marine Corps Reserve officer's letter dated 12 April 1999, and the Marine Corps Reserve major's facsimile transmission dated 21 April 1999 with enclosure.

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.

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The Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report for 1 February to 12 October 1993 should not be removed. They were unable to find that this report was submitted in reprisal. In this regard, they found no evidence that your reporting senior (RS) knew you had reported him. Enclosure (4) to your letter of 26 July 1998, the statement of 17 June 1998 from the Marine Corps colonel who directed the investigation of the RS, did not persuade the Board that the RS should not have been allowed to report on you.

The Board agreed with the advisory opinions dated 26 May 1998 and 10 March 1999 in finding that your failures by the Fiscal Year (FY) 1998 and 1999 Reserve Major Selection Boards should stand. They found that only your fitness report for 1 April 1996 to 31 January 1997 was missing for the FY 1998 Reserve Major Selection Board, which convened on 30 April 1997. They noted that the period of your fitness report for 1 February 1997 to 31 January 1998 ended after that promotion board convened. Finally, in light of the memorandum for the record, they found that both of these reports were available to the FY 1999 Reserve Major Selection Board.

In view of that 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.

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

4313-98

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

IN REPLY REFER TO:
1610
MMER/PERB
JUN 01 1998

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 CAPTAIN [redacted] USMCR

Ref: (a) Captai[redacted] DD Form 149 of 10 Feb 98
(b) MCO P1610.7C w/Ch 1-4
(c) MCO P1610.7C w/Ch 1-6

Encl: (1) CMC Advisory Opinion 1600 MMOA-4 of 26 May 98

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 14 May 1998 to consider Capta[redacted] petition contained in reference (a). Removal of the following fitness reports was requested:

a. Report A - 881018 to 890131 (SA) -- Reference (b) applies

b. Report B - 930201 to 931012 (TR) -- Reference (c) applies

2. The petitioner contends that both reports are adverse, yet he was not afforded an opportunity to officially acknowledge and respond to either evaluation. With specific regard to Report B, the petitioner alleges that the appraisal was written with undue prejudice during an investigation which involved the Company Commander (Ca[redacted] It is his assertion that when he (the petitioner reported the incident through the chain of command, it proved an embarrassment to Ca[redacted]

3. In its proceedings, the PERB concluded that:

a. The removal of Report A is warranted and has been directed.

b. Report B is both administratively correct and procedurally complete as written and filed. Contrary to the petitioner's beliefs, there is absolutely nothing in the report that qualifies it as "adverse" per the guidelines contained in Chapter 5 of reference (c). Additionally, and other than his own statement, there is no documentary evidence to indicate that Report B is anything other than a fair, objective, and accurate assessment of the petitioner's demonstrated performance during the period covered. To this end, the Board finds that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

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

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B should remain a part of Captain [redacted] official military record.

5. The enclosure is furnished to assist in resolving the matter of Capta[redacted] request for the removal of his failure of selection to the grade of Major.

6. The case is forwarded for final action.

[redacted]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

4313-98

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1600
MMOA-4
26 May 98

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

Subj: BCNR PETITION FOR CAPTAIN MARC [redacted] USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of Captain M[redacted] USMCR of 18 May 98

1. Recommend disapproval of Captai[redacted]s request for removal of his failure of selection.

2. Per the reference, we reviewed Captain [redacted]s record and his petition. Captain [redacted]ailed selection on the FY98 USMCR Major Selection Board. Subsequently, he petitioned the Board for Correction of Naval Records to remove the fitness reports for the periods of 881018-890131 and 930201-931012 as well as removal of failure of selection. The Performance Evaluation Review Board reviewed Captain [redacted]s petition and granted partial relief through removal of the fitness report for the period 881018-890131.

3. In our opinion, the petitioned reports ~~reports~~ present varying degrees of jeopardy to the record.

a. **The Fitness Report for the period of 881018-890131.** The removal of report for the period of 881018-890131 removed *some* jeopardy from his record because it indicates a decline in Lieutenant [redacted]s performance. This report contains substantially more less-than-outstanding Section B marks than the previous report. We note the removed report contained Above Average marks in Attention to Duty, Presence of Mind, and Economy of Management that had not appeared on the previous report. Additionally, he receives additional less-than-outstanding Section B marks in Regular Duties, Administrative Duties, Endurance, Military Presence, Cooperation, Initiative, Force, Leadership, Personal Relations, and Growth Potential. Furthermore, he has three officers ranked above him and is the only officer assigned a General Value to the Service mark of Excellent Finally, the Reporting Senior indicated he would "Be Glad" to serve with Captai[redacted]n time of combat.

Encl (1)

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Subj: BCNR PETITION FOR CAPTAIN MARG[redacted]
USMCR

b. **The Fitness Report for the period of 930201-931012.** This report *does* present significant jeopardy to the record because it indicates a decline in Captain [redacted] performance in his current rank. The Reporting Senior continues to assign less-than-outstanding Section B marks in Regular Duties, Tactical Handling of Troops, Military Presence, Attention to Duty, Leadership, and Growth Potential from the previous report. He assigns additional less-than-outstanding Section B marks in Administrative Duties, Endurance, Cooperation, Judgement, and Loyalty. Finally,the Reporting Senior lowers Captain [redacted] General Value to the Service mark from Excellent-Outstanding to Excellent.

However, we note the following areas of competitive concern that may have resulted in Captain [redacted] failure of selection *even if both reports were removed.*

a. **Value and Distribution.** Capt[redacted]has seven officers ranked above him and none below throughout his entire record.

b. **Section B trends.** Captai[redacted]'s record contains trends in Regular Duties, Administration, Handling Enlisted Personnel, Training Personnel, Tactical Handling of Troops, Military Presence, Attention to Detail, Cooperation, Initiative, Judgment, Economy of Management. We note Captain [redacted]eceives less-than-outstanding General Value to the Service marks in nine of the eleven observed fitness reports in his record.

d. **The Basic School (TBS) overall class standing.** SNO was in the bottom 5% of his Basic School class, ranking 191 out of 201.

e. **Possible Performance Declines.** The Fitness Report for the period of 900301-910228 indicates a possible performance decline from the previous report. The Reporting Senior assigns additional less-than-outstanding Section B marks in Endurance, Personal Appearance, Military Presence, Attention to Duty, Cooperation, and Growth Potential. Additionally, he assigns a lower mark in General Value to the Service, moving it from Excellent-Outstanding to Excellent.

4. In summary, we believe the petitioned reports present varying degrees of jeopardy to the record. However, there is significant competitive jeopardy remaining throughout the record to cause

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Subj: BCNR PETITION FOR CAPTAIN [redacted]
USMCR

Captain [redacted] failure of selection. Therefore, we recommend disapproval of Captain [redacted] request for removal of his failure of selection.

[redacted]
Major, U. S. Marine Corps
Head, Officer Counseling
and Evaluation Section
Officer Assignment Branch
Personnel Management Division

4313-98

MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: DSN 224-9842 OR COMM (703) 614-9842
FAX: DSN 224-9857 OR COMM (703) 614-9857
E-MAIL: GEORGE-BRIAN@HQ.SECNAV.NAVY.MIL

DATE: 30NOV98
DOCKET NO: 4313-98
PET: CAPT [redacted] USMCR [redacted]
PARTY CALLED: [redacted] USMC
TELEPHONE NO: (70[redacted]
WHAT PARTY SAID: I WAS INFORMED THAT THE FY-98 USMCR MAJ SEL BD DID NOT SEE ANY ADDITIONAL FITREPS NOT LISTED ON MBS. THE FY-99 USMCR MAJ SEL BD SAW TWO ADDITIONAL FITREPS, FOR 1APR96-31JAN97 AND 1FEB97-31JAN98.

[redacted]

4313-98

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

IN REPLY REFER TO:
1600
RAM 6
10 Mar 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [redacted] USMCR

Ref: (a) MMOA Advisory Opinion of 26 May 1998

1. Recommend disapproval of Captain [redacted] request for removal of his failure of selection.

2. Although Captain [redacted] was given competitive reserve fitness reports for the periods 01 April 1996 through 31 Jan 1997 and 01 Feb 1997 through 31 Jan 1998, his overall record is overshadowed with a significantly low peer distribution and severe performance trends. Additionally, the subject records were not served in his MOS of 0302 where SNO would be required to demonstrate his knowledge of Marine Corps doctrine and be ranked against peers of a commensurate MOS.

3. Captain [redacted] early Reserve career (November 1989 - October 1993) reaffirms a continuing trend of the low peer distribution marks that he encountered while serving on active duty. Seven Reserve fitness reports are overshadowed with low peer distribution marks and many marks of Excellent dominate the Master Brief Sheet; including trends in Handling Enlisted Personnel, Tactical Handling of Troops, Military Presence, Economy of Management and Judgment.

4. In summary, the severity of the competitive issues in Captain [redacted] record overshadow the positive contributions of the two subject fitness reports in such a manner as to sufficiently render the record less than competitive for promotion.

[redacted]
Major U. S. Marine Corps Reserve
Reserve Career Counselor
Career Management Team
Personnel Management Branch
Reserve Affairs Division
By direction of the Commandant of the Marine Corps