



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

LCC:ddj
Docket No: 1355-99
12 May 1999

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 w/attachments
(2) CMC memorandum 1120 MROA of 15 December 1998
(3) 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 to show Petitioner was appointed a Permanent Limited Duty Officer when first eligible.

2. The Board, consisting of Mses. Hare, Madison, and Mr. Cali, reviewed Petitioner's allegations of error and injustice on 11 May 1999 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 (2), the office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the 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 (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was appointed a Permanent Limited Duty Officer in the grade of Captain (0-3) on 1 November 1998.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

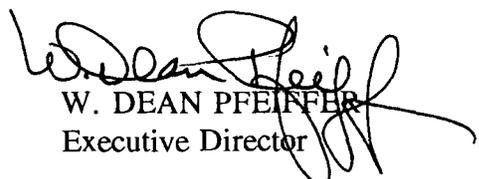
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
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.

12 May 1999


W. DEAN PFEIFFER
Executive Director



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

BJG
Docket No: 839-99
27 May 1999

ISTLT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Lieuten[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.

Your request for a special selection board was not considered, since you have been selected for promotion by the Fiscal Year (FY) 2000 Captain Selection Board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 May 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) in your case, dated 8 February 1999, the advisory opinion from the HQMC Officer Counseling and Evaluation Section, Officer Assignment Branch Personnel Management Division (MMAA-4), dated 15 March 1999, and the memorandum for the record dated 4 May 1999, copies of which are attached. They also considered your rebuttal letters dated 25 March and 18 May 1999.

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.

The Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should not be removed. They were unable to find that your reporting senior did not counsel you until the end of the reporting period, as you allege. In any event, they generally do not grant relief on the basis of allegedly inadequate counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided.

Since the Board found insufficient basis to remove the contested fitness report, and they concurred with the input from MMOA-4 reflected in the memorandum for the record, they concluded that your failure by the FY 1999 Captain Selection Board should stand.

In view of the above, your application 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

839-99



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

IN REPLY REFER TO:
1610
MMER/PERB
FEB - 8 1999

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
FIRST LIEUTENANT [REDACTED] III [REDACTED] SMC

Ref: (a) 1stLt [REDACTED] DD Form 149 of 19 Nov 98
(b) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 3 February 1999 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960801 to 970317 (GC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is unjust and portrays an inaccurate description of his performance during the stated period. This, he states, adversely affected his consideration before the FY99 Captain's Selection Board.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The challenged evaluation is reflective of a highly qualified performance with no grade less than "excellent." The comments in Section C convey a smart, under control, and adaptable lieutenant who will continue to grow with more experience and effort -- nothing adverse. In his comments, the Reviewing Officer acknowledged that the petitioner was exhibiting the potential for "normal growth and development."

b. Notwithstanding his own statement, there is absolutely no documentation to support the petitioner's disclaimer to performance counseling. Also absent at the time of the PERB'S consideration of this case were any letters in support of the petitioner's appeal (allegedly promised by Lieutenant Colonel [REDACTED] and Captain [REDACTED]). Succinctly stated, the petitioner has failed to substantiate that the challenged fitness report is not a true and accurate reflection of his performance during the stated period.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
FIRST LIEUTENANT [REDACTED] USMC

c. While the Reporting Senior failed to mention that the petitioner was filling a Captain's billet, that oversight was rectified by the Reviewing Officer. Hence, the petitioner was appropriately recognized.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First Lieutenant [REDACTED] official military record.

5. 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



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

839-99
IN REPLY REFER TO:
1600
MMA-4
15 Mar 99

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

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]
[REDACTED] USMC

Ref: (a) MMR Request for Advisory Opinion in the case of
First Lieutenant [REDACTED]
USMC of 12 Mar 99

1. Recommend disapproval of Lieutenant [REDACTED] request for removal of his failure of selection and a Special Selection Board.

2. Per the reference, we reviewed Lieutenant [REDACTED] record and petition. Lieutenant [REDACTED] failed selection on the FY99 USMC Captain Selection Board. He unsuccessfully petitioned the Performance Evaluation Review Branch (PERB) to remove a Grade Change fitness report for the period 960801 to 970317. Lieutenant [REDACTED] now requests removal of his failure of selection and a Special Selection Board.

3. In our opinion, the petitioned report does present some jeopardy to the record. It contains less competitive Section B marks in Administrative Duties, Handling Enlisted Personnel, Training Personnel, Attention to Duty, Initiative, Force, Leadership, and General Value to the Service. However, we believe the following areas of competitive concern most likely would have resulted in his failure of selection even with the petitioned report removed from the record:

a. **Value and Distribution.** Lieutenant [REDACTED] overall Value and Distribution contains two officers ranked above him and none below.

b. **Section B marks.** Lieutenant [REDACTED] record contains less competitive Section B marks in Administrative Duties, Training Personnel, Initiative, and Force.

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]
[REDACTED] USMC

c. **Requisite Professional Military Education (PME).**

Lieutenant [REDACTED] is not completed the requisite PME for his grade per MCO 1553.4.

4. In summary the petitioned report does present *some* jeopardy to the record. However, we believe there would remain sufficient competitive concerns in the record *even with the report removed* to result in his failure of selection. Therefore, we recommend disapproval of Lieutenant [REDACTED] request for removal of his failure of selection and a Special Selection Board.

[REDACTED]

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

839-99

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, COMM (703) 614-9857, OR (815) 328-0742
E-MAIL: GEORGE.BRIAN@HQ.NAVY.MIL

DATE: [REDACTED]
DOCKET: [REDACTED]
PET: 1ST [REDACTED] USMCR
PARTY CALLED: [REDACTED] USMC [REDACTED]
TELEPHONE NO: (703) [REDACTED]

WHAT PARTY SAID: [REDACTED] INFORMED ME THAT THE TWO MISSING FITREPS (22MAY-31DEC97, 31DEC97-1FEB98) WOULD NOT HAVE HAD AN IMPACT ON HIS COMPETITIVENESS BEFORE THE FY-99 USMC CAPT SEL BD. "ONE OF ONE" FITREPS, AND PET HAD TWO OFFICERS RANKED ABOVE HIM, AND NO ONE BELOW HIM ON OTHER FITREPS.

[REDACTED]