



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 3328-99

7 September 1999

MAJ [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Maj [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.

It is noted that the Commandant of the Marine Corps (CMC) has removed your fitness report for 1 August 1997 to 31 July 1998 and modified your report for 1 August to 1 October 1998 by removing all references to your removed report for the preceding period.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 September 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 18 May 1999, and the advisory opinion from the HQMC Officer Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 29 July 1999, copies of which are attached. They also considered your rebuttal letters dated 17 July and 24 August 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice.

The Board substantially concurred with the PERB report in finding that your fitness report for 1 August to 1 October 1998 should not be removed completely. Assuming you are correct that your Board of Inquiry (BOI) proceedings were not completed until 2 October 1998, they noted that your change of duty, which established the ending date of the report, could have been delayed by one day to remove all doubt about the propriety of mentioning the BOI in your change of duty report. They found the failure to take this action, assuming it to have been technically required, did not invalidate the report.

The Board substantially agreed with the advisory opinion from MMOA-4 in finding that your failures by the Fiscal Year 1999 and 2000 Lieutenant Colonel Selection Boards should stand. Your request for retroactive promotion, in the event of your selection with a corrected record, was not considered as you have not been selected or promoted, and your record has not been corrected as you requested.

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.

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
MAY 18 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 MAJOR
[REDACTED] USMC

Ref: (a) Major [REDACTED] DD Forms 149(2) of 11 Jan 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 May 1999 to consider Major [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 970801 to 980731 (DC)
- b. Report B - 980801 to 981001 (CD)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that Report A fails to comply with the provisions of reference (b) in that the report was not completed in a timely manner. It is his position that it's late submission was not an administrative "oversight", but an intentional delay with a view toward acquiring adverse material. The petitioner further argues that the report is a substantively inaccurate portrayal of his overall performance during the 12-month period, is unjust, and was based on biased information. To support his allegations, the petitioner furnishes copies of previous iterations of the report and a letter from Colonel Rosewarne (Battalion Commander for 11 of the 12 months covered by Report A). Concerning Report B, the petitioner again charges that the evaluation fails to comply with the provisions of reference (b), specifically the inclusion of unacceptable comments concerning the pending outcome of a fact-finding board (in this case, a Board of Inquiry (BOI)), and adverse material received outside of the reporting period. In support of this argument, the petitioner provides a copy of a letter from this Headquarters, dated 2 October 1998, which terminated administrative separation proceedings.

3. In its proceedings, the PERB concluded that:

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

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

b. With minor editorial exceptions, Report B is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

(1) Under date of 21 September 1998, the President of the Board of Inquiry [REDACTED] forwarded the completed report of the BOI to this Headquarters (JAM) outlining proceedings held on 20 May and 30 and 31 July 1998. The BOI's final report was during the period covered by Report B.

(2) The letter from this Headquarters, signed by Lieutenant General [REDACTED] and dated 2 October 1998 (which references Colonel [REDACTED] letter) was merely a pro forma notice to the petitioner that the BOI's final report of 21 September 1998 was accomplished. The 2 October 1998 letter did not somehow put the final report of the BOI outside the reporting period.

(3) Regardless of the number of iterations the Reporting Senior had to go through to ensure the report was submitted within the spirit and intent of reference (b), the fact is that the report is the official report of record. The petitioner viewed it, acknowledged its adversity via signature in Item 24, and appended a statement of rebuttal. Given the unique circumstances of this case, the delay in properly preparing Report B was neither unreasonable nor inordinate.

(4) The mark of "yes" in Item 17b (adverse) is not inappropriate or contrary to reference (b). The BOI was conducted under the auspices of the Commanding General, Marine Corps Combat Development Command -- not the Commanding Officer, Weapons Training Battalion. Consequently, it was properly recorded as adversity from outside the Weapons Training Battalion command, as were the petitioner's actions that precipitated the BOI.

(5) Since the PERB has directed elimination of Report A, any reference to that document or the issues pertaining to it, should be expunged. Therefore, the PERB has directed the following changes to Report A:

(a) Standard Addendum Page completed by the petitioner on 981221. Removal of the following verbiage from paragraph one: "as evidenced by his attempt to include

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
 [REDACTED] USMC

statements concerning the BOI in earlier fitness reports. The previous reporting period fitness report, 970801-980731, was rewritten and signed by the RS and myself at least three different times with attempts to document the BOI."

(b) Standard Addendum Page completed by Colonel [REDACTED] of 4 Jan 99. Removal of the following verbiage from paragraph two: "and the fitness report completed on 980731. Both reports were". The second sentence in paragraph two is being changed to read: "The report was rewritten by LtCol [REDACTED] under my direction . . ."

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B, as modified, should remain a part of Major [REDACTED]'s official military record. The limited corrective action identified in subparagraphs 3b(5)(a) and 3b(5)(b) are considered sufficient.

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

3328-99

IN REPLY REFER TO:

1600
MMA-4
29 Jul 99

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

Subj: BCNR PETITION FOR MAJOR [REDACTED]
[REDACTED] USMC

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

1. Recommend disapproval of Maj [REDACTED] request for removal of his failures of selection.

2. Per the reference, we reviewed Major [REDACTED]'s record and petition. He failed selection on the FY99 and FY00 USMC Lieutenant Colonel Selection Board. Subsequently, he petitioned for removal of fitness reports for the period of 970801 to 980731 and 980801 to 981001 from the record. The Performance Evaluation Review Board (PERB) reviewed the petition and approved the removal of the fitness report for the period of 970801 to 980731. The PERB determined the fitness report for the period 980801 to 981001, as modified to eliminate any reference to the fitness report for the period 970801 to 980731, should remain a part of the official military record. Major [REDACTED] requests removal of his failures of selection

3. In our opinion, the fitness report for the period of 970801 to 980731 presents serious competitive concern to Major [REDACTED] record due to numerous comments concerning his substandard performance. The removal of the report of 970801 to 980731 eliminates some competitive concern from the record, but the PERB's decision to keep the report of 980801 to 981001 provides substantial competitive concern to the record due to its adverse nature. In addition, his record contains other areas of competitive concern that more than likely contributed to his failure of selection:

a. **Value & Distribution.** During Major [REDACTED]'s time as a Major, he has fourteen officers ranked above him and twelve below, placing him in the bottom half of the pack.

Subj: BCNR PETITION FOR MAJOR [REDACTED] USMC

b. **Section B Trends.** Since 1983, the record reflects trends of less-than-outstanding Section B markings in Administrative Duties, Handling Officers, Handling Enlisted Personnel, Cooperation, Judgment, Personal Relations, and Economy of Management.

c. **Transfer (TR) Fitness Report for the period of 960801-970112.** The Section C comments and ranking appear very uncompetitive for a TR report. Section C comments such as "commendable job as a logistician" and "a talented staff officer who has much to offer the Marine Corps in this capacity" appear less competitive when compared to his peers. Furthermore, the Reporting Senior's ranking of four officers above Major [REDACTED] and two below appears very uncompetitive for an officer who has served 30 months in that command. Finally, the Reviewing Officer's non concurrence seems to be a relatively weak gesture with a ranking of three officers above Major [REDACTED] and three below.

4. In summary, the PERB's decision to keep the report of 980801 to 981001 provides substantial competitive concern to the record due to its adverse nature. In addition, Major [REDACTED]'s record contains other areas of serious competitive concern that more than likely contributed to his failure of selection. Therefore, we recommend disapproval of Major [REDACTED]'s request for removal of his failures of selection.

5. Point of contact is Major [REDACTED] at [REDACTED]

[REDACTED]

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