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

BJG
Docket No: 1171-00
4 May 2000

1STLT [redacted] USMCR
[redacted]

Dear Lieutenant [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 modified your contested adverse fitness report for 10 September to 30 October 1998 by directing removal of the Standard Addendum Page prepared by a Marine Corps colonel.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 May 2000. 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 14 February 2000, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 23 March 2000, copies of which are attached.

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 the contested fitness report, as amended, should not be removed. In this connection, they were unable to find that you were not counseled about your performance before you received the report at issue, noting that the reviewing officer states you received "a great deal of counseling" from your reporting seniors and other senior officers, including himself. In any event, the Board generally does not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize

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it as such when it is provided. They likewise were unable to find that a personality conflict existed between you and your reporting senior. In this regard, they noted that a subordinate has an obligation to get along with superiors.

The Board found that your failures by the Fiscal Year 2000 and 2001 Captain Selection Boards should not be expunged. They found that removal of the colonel's Standard Addendum Page from an otherwise adverse fitness report would not have appreciably enhanced your competitiveness for promotion. They also agreed with the advisory opinion from MMOA-4 in concluding that even if the contested fitness report had been removed completely, your selection would have been definitely unlikely.

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

1171-00

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

IN REPLY REFER TO:
1610
MMER/PERB
14 FEB 2000

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] USMC

Ref: (a) 1stLt [redacted] DD Form 149 of 30 Nov 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 8 February 2000 to consider First Lieutenant [redacted] petition contained in reference (a). Removal of the fitness report for the period 980910 to 981030 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner alleges inconsistencies between some of the assigned ratings in Section B and the comments in Section C; that the report fails to comply with reference (b); and that the period of observed time was insufficient. To support his appeal, the petitioner furnishes his own detailed letter and advocacy statements from C[redacted], First Lieutenant [redacted] and [redacted]

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

a. Contrary to the petitioner's assertions and arguments, the markings in Section B are totally consistent with the narrative comments in Section C. Additionally, the attempt to somehow link the challenged evaluation with a previously submitted appraisal by a different Reporting Senior is considered inappropriate and without merit. Fitness reports are restricted, as directed by reference (b), to the period covered by the subject evaluation and are not to be influenced by, nor reference behavior/performance occurring outside that period.

b. While the advocacy statements enclosed with reference (a) are sympathetic to and supportive of the petitioner, they do not invalidate the fitness report under consideration. There is no substantive evidence to prove the inferences that the petitioner was made a "scapegoat" or otherwise treated unfairly. References

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

made to the Reporting Senior being unduly influenced by the Reviewing Officer are unsupported. The third-party conversation identified between the Division Adjutant and the Reporting Senior of record does not dispute that it was the Executive Officer's intent to relieve the petitioner. Seemingly, the only salient point addressed was the intended degree of adversity on the part of the reporting officials. Regardless of degree, the report is adverse and all procedural requirements have been met.

c. The Reviewing Officer sufficiently adjudicated the differences between the Reporting Senior's evaluation and the petitioner's rebuttal. In this case, the Regimental Commander incorrectly completed a detailed third officer sighting prior to forwarding the report for sighting by a General Officer. The Board does not, however, find this to invalidate the entire report and has directed elimination of the Standard Addendum Page completed by Colonel [redacted]

d. While the reporting period covers less than 90 days of observed time, the Board is haste to point out that the recorded substandard performance more than justifies an "observed" evaluation. Additionally, the close daily relationship between the petitioner and the Reporting Senior further solidifies the decision to render an "observed" appraisal.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as amended, should remain a part of First Lieutenant [redacted]'s official military record. The limited corrective action identified in subparagraph 3c is consider sufficient.

5. The case is forwarded for final action.

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

11/71/00

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

IN REPLY REFER TO:
1600
MMOA-4
23 Mar 00

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

Subj: BCNR PETITION FOR FIRST LIEUTENANT [redacted] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of First Lieutenant [redacted] USMC of 17 Mar 00

1. Recommend disapproval of First Lieutenant [redacted] implied request for removal of his failure of selection.

2. Per the reference, we reviewed First Lieutenant [redacted] record and petition. He failed selection on the FY00 USMC Captain Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Directed by the Commandant of the Marine Corps fitness report of 980910 to 981030. First Lieutenant [redacted] implies a request for removal of his failure of selection

3. In our opinion, the petitioned report does present serious jeopardy to the record. However, First Lieutenant [redacted] has other areas of serious jeopardy in his record that more than likely contributed to his failure of selection.

a. **Section B Marks.** The record reflects less competitive Section B marks in Regular Duties, Administrative Duties, Handling Officers, Handling Enlisted Personnel, Endurance, Attention to Duty, Cooperation, Initiative, Judgment, Force, Leadership, Loyalty, Personal Relations, Economy of Management, and Growth Potential. While at The Basic School he is marked Below Average in Regular Duties and Growth Potential, and Unsatisfactory in Judgment. In addition, he is not recommended for promotion.

b. **Overall Value and Distribution.** First Lieutenant [redacted] verall Value and Distribution marks are less competitive. He has five officers ranked above him and none below, placing him at the bottom of the pack. He receives General Value to the Service marks of Below Average, Excellent, and Excellent to Outstanding.

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Subj: BCNR PETITION FOR FIRST LIEUTENANT [redacted] USMC

c. **Section C and Reviewing Officer Comments.** First Lieutenan[redacted] Section C comments are replete with growing comments. As a student at The Basic School the Reporting Senior states, "Repeated integrity violations make it impossible to trust this officer!" As the Adjutant for 3d Battalion, 8th Marines, the Reporting Senior states, "often overcome by his own exuberance on minor issues which tend to counter his effectiveness and the efficiency of his section."

4. In summary, we believe First Lieutenant [redacted] petition is without merit. His record received a substantially complete and fair evaluation by the Board. Had the petitioned report been removed by the PERB, his record would not have been significantly improved. First Lieutenant [redacted] record has other areas of serious jeopardy beyond the petitioned report that more than likely contributed to his failure of selection. Therefore, we recommend disapproval of First Lieutenant [redacted] implied request for removal of his failure of selection.

5. Point of contact is Majo[redacted]

[redacted]

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