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

BJG
Docket No: 5814-99
15 October 1999

MA[redacted] USMC

Dear Major[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 October 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 Performance Evaluation Review Board (PERB), dated 13 September 1999, a copy of which is attached. They also considered your rebuttal letter dated 25 September 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. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, 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.

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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

Enclosure

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

IN REPLY REFER TO:
1610
MMER/PERB
SEP 13 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]D Form 149 of 22 Jun 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 7 September 1999 to consider Major [redacted] petition contained in reference (a). Removal of the fi[redacted]report for the period 980401 to 980729 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report is ". . . replete with policy errors." It is his position that during the period covered he held three to four major billets, information on which should have been incorporated into the fitness report (to include an observed marking in Item 13b - additional duties). He also argues that all Marines of his grade, for whom Colonel [redacted] Reporting Senior responsibility, were not included in Item 15b and on page two of the document. The petitioner further alleges that the Reporting Senior violated the provisions of reference (b) which stipulate that ". . . noteworthy examples of creativity . . ." are to be conveyed via commentary in Section C. As a final matter, the petitioner points out that neither Colonel [redacted]r [redacted] completed the report in a timely manner. To support his appeal, the petitioner furnishes a detailed "Information Paper" containing ten attachments.

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. Although the petitioner documents that he was listed as holding the additional billet as S-4, and temporarily as acting in others, that does not justify an observed mark in Item 13b. The documentation he furnishes to support this claim meets an administrative requirement of the command and can be viewed as referring to "collateral duties" that did not meet the criteria of subparagraph 4005.2 of reference (b) (i.e., Item 13b is marked other than "not observed" only when the Marine devotes a

prolonged period of time to such duties.). Notwithstanding the former Executive Officer's comments at enclosure (1) to reference (a), the Reporting Senior apparently opined there was no justification for other than a "not observed" mark in Item 13b.

b. The report prior to the one under consideration (written by the author of the letter at enclosure (1) to reference (a)) states the petitioner was leaving the S-4 billet to a command billet as Support Company Commanding Officer. The subsequent report written by Colonel [redacted] successor (Colonel [redacted]) does not mention anything about the petitioner serving as the S-4. Yet, the petitioner urges that enclosure (9) to reference (a) proves he was active as the S-4, not only during the period covered by the challenged fitness report, but also during that subsequent period under [redacted] It can only be presumed that the petitioner did not devote "significant time" as S-4 since neither Colonel [redacted] nor [redacted] opted to assign an observed grade in Item 13b or make specific comments in the Section C narrative.

c. The essence of the project information provided a[redacted] enclosure (10) to reference (a) was commented on by Colon[redacted] in his evaluation subsequent to the report at issue. While the petitioner points out that reference (b) directs the incorporation into Section C of noteworthy examples of creativity, the Board observes and is haste to point out two important points:

(1) Section C of the challenged report contains a number of "noteworthy examples of creativity" (i.e., embraces opportunities to make important decisions; persuasive and convincing; establishes a clear focus and direction; tackles tough issues; expertly manages competing demands on his time and remains focused on key objectives; consistently comes up with newer, more efficient ways to complete his mission - - to name a few).

(2) It was/is the Reporting Senior who determines what will and will not be incorporated into Section C of the fitness report (minus the "mandatory comments" required by reference (b)).

d. The petitioner does not justify (or document) that for the period ending "980729", Colone[redacted]eported on any more than three Majors. Major[redacted]y have been a company commander, but he could have been deployed and under a new

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Reporting Senior. This often happens in service support organizations.

e. Notwithstanding the petitioner's arguments and the documentation furnished in support of reference (a), the Board is not convinced or otherwise persuaded that the petitioner was treated/evaluated in an unjust manner or that the report represents anything other than a fair and accurate appraisal of his performance during the stated period. In this regard, and while this Headquarters and the PERB do not condone the late submission of fitness reports, that fact alone does not somehow prove the report is inaccurate/unfair.

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

5. The case is forwarded for final [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