



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

BJG
Docket No: 8387-97
17 December 1999

MA [REDACTED] USMCR
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Major [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. Your previous case, docket number 9183-95, was denied on 19 June 1996. By order of 29 October 1997, the United States District Court for the District of Columbia, Case Number 97-0014 (SS), remanded the case to the Board for Correction of Naval Records for reconsideration with the following directions:

1. Consider the following evidence:

a. Your declaration dated 1 September 1997 that a counselor at the Headquarters Marine Corps (HQMC) Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4) informed you that your now removed fitness report for 15 July to 21 November 1994 materially contributed to your failure by the Fiscal Year (FY) 1996 Major Selection Board.

b. The fact that the MMOA-4 advisory opinion dated 29 November 1995 did not compare your record with a sampling of records of your peers from the FY 1996 Major Selection Board.

c. The fact you were selected by the FY 1998 Reserve Major Selection Board.

2. Apply the standard of review requiring a finding as to "whether it was definitely unlikely that [you] would have been selected for promotion to Major at the FY[19]96 Major Selection Board with the fitness report removed from [your] record."

3. Report the Board's opinions and recommendations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)).

In your previous case, you requested removal of your failures by the FY 1996 and 1997 Major Selection Boards, and remedial consideration for promotion. The memorandum for the record (MFR) dated 1 November 1999, a copy of which is attached, reflects that you now also request restoration to active duty. By reason of your failures of selection for promotion, you were involuntarily discharged from the Regular Marine Corps on 1 January 1997.

A three-member panel of the Board, sitting in executive session, reconsidered your case on 8 December 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 the court's order, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion from the HQMC MMOA-4, dated 25 November 1997, a copy of which is attached. They also considered the MFR dated 1 November 1999, cited above, and the MFR dated 6 December 1999, a copy of which is attached. Finally, they considered your declaration dated 1 September 1997 and the Master Brief Sheets of six officers who were considered by the FY 1996 Major Selection Board (three selectees and three who were not selectees).

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 advisory opinion in finding that your failure by the FY 1996 Major Selection Board should stand. They found it "definitely unlikely" that you would have been selected by that promotion board with a corrected record. They found it probable that the fitness report in question was not in your record considered by the FY 1997 Major Selection Board, noting the MFR dated 6 December 1999. Further, even if this fitness report were in your record as it was presented to that promotion board, the other matters of competitive concern cited in the advisory opinion persuaded the Board that your selection by the FY 1997 Major Selection Board would have been "definitely unlikely" with the report out of your record. Concerning your declaration, they had no doubt that the removed report materially contributed to your failure by the FY 1996 Major Selection Board. Your statement that the counselor "noted no other significant areas of weakness" did not convince them that the other matters cited in the advisory opinion were not factors in your failures of selection. Regarding your selection by the FY 1998 Reserve Major Selection Board, they took administrative notice that selection by a reserve promotion board is easier than selection by a corresponding active duty promotion board.

Since the Board found insufficient grounds to remove either of your failures of selection for promotion, they found no basis to grant you remedial consideration for promotion, set aside your discharge from the Regular Marine Corps, or reinstate you to active duty.

In view of the above, absent contrary direction from the ASN (M&RA), the previous decision of the Board to deny relief stands. 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

Copy to:
Charles W. Gittins, Esq.

4387-97



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

IN REPLY REFER TO:
1600
MMA-4
25 Nov 97

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

Subj: BCNR PETITION FOR MAJOR [REDACTED]
USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] USMCR
of 17 Nov 97
(b) Memorandum for the Executive Director, Board for
Corrections of Naval Records of 29 Nov 95

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

2. Per reference (a), we reviewed Major [REDACTED] corrected record as it would have appeared before the FY96 USMC Major Selection Board.

3. In our opinion, the petitioned report does represent jeopardy to the record. It documents his performance as below his peers just prior to the board. The less-than-outstanding Section B marks, particularly in Growth Potential and General Value to the Service, appear significant because of his time in service and grade. Section C comments, such as "A STRONGER CONCEPTUAL ACUITY AND INCREASED WRITING SKILLS WILL SERVE TO STRENGTHEN AND PREPARE HIM FOR FUTURE ASSIGNMENTS." and "ALWAYS STRIVES TO RISE ABOVE DIFFICULT CIRCUMSTANCES - AND HAS THE CAPACITY TO DO SO." appear to indicate that he is not working at a level expected of his rank and experience. Furthermore, he is the only officer to receive a less-than-outstanding mark in General Value to the Service, clearly indicating that his overall performance is at a level below his peers. We consider it significant that he is singled out below the other officers on the report. However, even with the petitioned report removed for the record, we believe that the following competitive concerns may have resulted in his failure of selection:

a. **Military Occupational Specialty (MOS) credibility.** Major [REDACTED] has not had an assignment in his primary MOS since his initial one as a second lieutenant. He has 3 officers ranked above him and 0 below in his primary MOS. Finally, his lack of company command time as a captain may have made his record appear less competitive than his peers.

Subj: BCNR PETITION FOR [REDACTED] USMCR

b. **Section B trends.** [REDACTED] record contains trends of less-than-outstanding Section B marks in Administrative Duties, Force, and Economy of Management.

c. **Value and Distribution.** [REDACTED]' overall Value and Distribution reflects more officers ranked above him than below.

d. **Professional Military Education (PME).** [REDACTED] record indicates he has not completed the requisite PME for the grades of lieutenant and captain.

4. We reviewed the records of 6 officers that were retained by the Promotions Branch as sample cases: 3 selected for promotion and 3 that failed selection for promotion. [REDACTED] record does not appear as competitive as those records selected for promotion. His record appears less competitive than at least one of the records not selected for promotion. Therefore, we feel there is no compelling evidence that would cause us to change our original recommendation contained in reference (b).

5. The FY96 USMC Major Selection Board had a selection opportunity of 70.0 percent. The overall in-zone selection rate was 70.0 percent. The in-zone selection rate for 1802s was 81.3 percent.

[REDACTED]

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

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
E-MAIL: [REDACTED]@HQ.NAVY.MIL

DATE: 1NOV99

DOCKET NO. [REDACTED]

PETITIONER (PET) [REDACTED] USMCR

PARTY WHO CALLED: [REDACTED]

TELEPHONE NUMBER [REDACTED]

WHAT I SAID: I ASKED IF PET STILL WANTED A SPEC SEL BD, WHETHER HE WANTED TO RETURN TO ACTIVE DUTY, AND WHETHER HE WAS GOING TO SUBMIT A REBUTTAL TO THE ADVISORY OPINION FROM MMOA-4.

WHAT PARTY SAID: HE INFORMED ME THAT PET STILL WANTED A SPEC SEL BD AND TO RETURN TO ACTIVE DUTY. HE STATED THAT HE WAS NOT GOING TO SUBMIT A REBUTTAL STATEMENT TO THE ADVISORY FROM MMOA-4.

[REDACTED]
[REDACTED]
[REDACTED]

MEMORANDUM FOR THE RECORD
DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
PERFORMANCE SECTION
2 NAVY ANNEX, STE. 2432
WASHINGTON, DC 20370-5100
COMM: (703) 614-9842 OR DSN: 224-9842
FAX: (703) 614-9857 OR 224-9857

DATE: 6DEC99

DOCKET NO: [REDACTED]

PETITIONER (PET): [REDACTED] MONS, USMCR

PARTY CALLED: MS [REDACTED] PERB

TELEPHONE NO: [REDACTED]

WHAT I SAID: N/A

WHAT PARTY SAID: MS [REDACTED] INFORMED ME SHE DIRECTED THAT
PET'S CONTESTED FITREP BE REMOVED ON 29NOV95 BY NOTIFYING THE
HQMC MMPR-1 AND MMSB OF THE PERB'S ACTION. THE FY-97 USMC MAJ SEL
BD DID NOT CONVENE UNTIL 30JAN96.

[REDACTED]



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

4387-97

15 February 2000

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

Subj: BCNR CASE OF MAJ [REDACTED] USMCR

I have considered the report of the Board for Correction of Naval Records dated 17 December 1999. The BCNR recommended that the relief requested by petitioner be denied. After careful review, I approve the BCNR's report and recommendation.

[REDACTED]

Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

15 February 2000

[REDACTED]

Dear [REDACTED]

Pursuant to the order dated October 29, 1997, from the United States District Court for the District of Columbia, I have reviewed the report, dated December 17, 1999, of the Board for Correction of Naval Records (BCNR) in the case of your client, Major [REDACTED] United States Marine Corps Reserve.

After careful review of your client's case, I approve the report of the BCNR.

I regret that a more favorable reply could not be made.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

Assistant Secretary of the Navy
(Manpower & Reserve Affairs)