



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

5661-00

BJG  
Docket No: 5661-00  
30 August 2000

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: CAP [REDACTED] USM [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 24 Apr 00 w/attachments  
(2) HQMC PERB memo dtd 16 Aug 00 w/encl  
(3) HQMC MMOA-4 memo dtd 11 Aug 00  
(4) 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 by removing the fitness report for 1 August 1998 to 16 July 1999, a copy of which is at Tab A. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness report. Petitioner further requested removal of his failure of selection before the Fiscal Year 2001 Limited Duty Officer (LDO) Major Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to LDO major as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Ensley, Schultz, and Swarens, reviewed Petitioner's allegations of error and injustice on 24 August 2000, 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 (3), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this 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 (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to LDO major as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of 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 a 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

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
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.

*Robert D. Zsalmán*  
FOR W. DEAN PFEIFFER  
Executive Director

5661-00



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

IN REPLY REFER TO:  
1610  
MMER  
16 Aug 00

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

Subj: BCNR APPLICATION IN THE CASE OF CAPTAIN [REDACTED]  
[REDACTED] SMC

- Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 9 Aug 00
- (2) CMC Advisory Opinion 1610 MMOA-4 of 11 Aug 00
- (3) Copy of CMC ltr 1610 MMER of 16 Aug 00

1. As evidenced by enclosure (1), PERB removed from Captain [REDACTED] official military record, the fitness report for the period 980801 to 990716 (TR).

2. We defer to BCNR on the issue of Captain [REDACTED] request for the removal of his failure of selection to the grade of Major. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provided Captain [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]

Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
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

IN REPLY REFER TO:  
 1610  
 MMR/PERB  
 9 AUG 2000

From: Commandant of the Marine Corps  
 To: Captain [REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
29 Jul 99	[REDACTED]	980801 to 990716 (TR)

2. There will be inserted in your Naval record a memorandum in place of the removed report. The memorandum will contain appropriate identifying data concerning the report and state that it has been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the report or the events which may have precipitated it, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED SIGNATURE]

By direction



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

IN REPLY REFER TO:  
1600  
MMA-4  
11 Aug 00

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

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

Ref: (a) MMR Request for Advisory Opinion in the case  
of [REDACTED] USMC  
of 10 Aug 00

1. Recommend approval of Captain [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed Captain [REDACTED] record and his petition. Captain [REDACTED] selection to Major on the FY01 USMC Limited Duty Officer Promotion Board. Subsequently, he successfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Transfer fitness report of 980801 to 990716. Captain [REDACTED] requests removal of his failure of selection.
3. In our opinion, the petitioned report contained significant jeopardy that may have resulted in Captain [REDACTED] non-selection. The report contained numerous "growing" remarks in Section I that were clearly intended to indicate adverse performance in a report not marked adverse by the Reporting Senior. The Reviewing Officer's comments contained similar "growing" comments to include the statement, "Requires significant grooming for field grade promotion." This comment alone could have resulted in Captain [REDACTED] failure of selection.
4. Removal of this report significantly increases the competitiveness of Captain [REDACTED] record as no other competitive concerns are evident in an otherwise unblemished career. We, therefore, recommend approval of his request for removal of his failure of selection.

[REDACTED]  
Colonel, U. S. Marine Corps  
Head, Officer Assignment Branch  
Personnel Management Division