



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

BJG
Docket No: 5821-01
16 October 2001

MAJ [REDACTED] USMC
[REDACTED]

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 12 October 2001. 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 23 July 2001, the advisory opinion from the HQMC Promotion Branch, dated 20 August 2001, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division, dated 30 August 2001, copies of which are attached. They also considered your rebuttal letter dated 10 August 2001.

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 in finding that the contested fitness report should stand. They were not persuaded that this report placed undue emphasis on your nonjudicial punishment, nor did they find the report lacked sufficient justification for the adverse marks assigned. Finally, the decision of your board of inquiry to retain you did not convince them that the fitness report at issue was erroneous or unjust. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 2001 and 2002 Lieutenant Colonel Selection Boards, or recommend you for remedial consideration for promotion. In view of the above, 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. 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

5821-01
IN REPLY REFER TO:
1610
MMER/PERB
23 JUL 2001

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] JR., [REDACTED] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 3 May 01
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 July 2001 to consider Major [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970801 to 980519 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the fitness report at issue contains policy error, is substantively inaccurate, and represents an injustice. To support his appeal, the petitioner furnishes his own detailed statement and several documentary items reflecting on the situation.

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. Items 17b (adverse) and 17c (disciplinary) were correctly marked "yes." The Commanding General, Marine Corps Base, Quantico, imposed nonjudicial punishment (NJP). Since that was outside the direct reporting chain, it was correctly included as adverse material (17b) and recorded as disciplinary action (17c). The marking of "yes" in Item 17b can be further defended since the petitioner's actions concerned an association with a woman other than his wife and obviously took place outside the confines of his work place. The relationship - an uncontroverted matter of fact - was obviously known to others outside the reporting chain.

b. Section B markings and Section C comments are reflective of the NJP and should be considered due to the petitioner's misconduct. Furthermore, the Reporting Senior appropriately

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] JR., [REDACTED] MC

included and considered the entire reporting period and made reference to the petitioner's other accomplishments.

c. The petitioner's attempt to redirect attention from his misconduct and NJP to his illogical approach and misinterpretation of reference (b) is self-serving at best. A fitness report evaluates the "whole Marine", both in the primary billet and by overall actions on and off the job. In the petitioner's own words on the last page of his rebuttal regarding his actions as the whole Marine: ". . .conduct unbecoming of an officer of any grade. It was stupid. . . wrong. . . I was lacking. . . a bad decision . . . personally disappointed in myself for exercising poor judgment."

d. Notwithstanding all of the narration and documentation furnished with reference (a), the facts remain unchanged.

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

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
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:
1412/2
MMPR
20 AUG 2001

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

Subj: BCNR APPLICATION IN THE CASE OF MAJOR [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Route Sheet of 16 May 2001
(b) SECNAVINST 1401.1B
(c) MCO P1400.31

1. Reference (a) requested an advisory opinion in the case of [REDACTED] s requesting removal of his fitness report for the period 970801 to 980519 and a special selection board.

2. The following facts are germane:

a. [REDACTED] was eligible and not selected as an in zone officer on the FY01, and as an above zone officer on the FY02. USMC Lieutenant Colonel Promotion Selection Boards, which convened on 991019 and 001011 respectively.

b. The report in question had been in [REDACTED] s record for over a year when he was first considered for promotion. [REDACTED] made no effort to have the report removed from his record until 010503, nearly three years after the report was written and after twice failing of selection.

3. Promotion Branch recommends that [REDACTED] request for a special selection board through BCNR be denied since he has not exhausted the appropriate administrative procedures for requesting a special selection board set forth in references (b) and (c)

4. The point of contact in this matter is C [REDACTED] at [REDACTED]

[REDACTED]

Colonel, U. S. Marine Corps
Head, Promotion Branch



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

582-01

IN REPLY REFER TO:
1600
MMAA-4
30 Aug 01

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
Major [REDACTED]
USMC of 8 Aug 01

1. Recommend disapproval of [REDACTED] request for removal of his failures of selection and special selection board.
2. Per the reference, we reviewed [REDACTED] record and petition. [REDACTED] failed selection on the FY-01 and FY-02 USMC Lieutenant Colonel Selection Boards. Subsequently, the Performance Evaluation Review Board (PERB) denied his request for removal of the Change of Reporting Senior fitness report of 970801 to 980519. [REDACTED] requests removal of his failures of selection and a special selection board.
3. In our opinion, [REDACTED] record, as it appeared before the boards, was complete, accurate, and provided a fair assessment of his performance. Had the petitioned report been removed, the record would have been more competitive, enough so to warrant removal of the failures of selection. Since the unfavorable PERB action did not change the competitiveness of the record, we recommend disapproval of [REDACTED] request for removal of his failures of selection.
4. POC is Maj [REDACTED] at [REDACTED].

[REDACTED]

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