



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

dn

BJG
Docket No: 146-02
14 March 2002

MAJ [REDACTED] USMC
[REDACTED]

Dear [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 March 2002. 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 7 January 2002, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 26 February 2002, copies of which are attached. They also considered your undated rebuttal letter.

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 concluding no correction of your fitness report record was warranted. Since the Board found no defect in your performance record, they had no basis to strike your failure by the Fiscal Year 2002 Lieutenant Colonel Selection Board. 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

146-02

IN REPLY REFER TO:

1610
MMER/PERB
JAN 7 2002

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: [REDACTED]'s DD Form 149 of 20 Aug 01
(b) MCO P1610.7D w/Ch 1-2
(c) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 3 January 2002 to consider [REDACTED]'s petition contained in reference (a). Removal and replacement of the following fitness reports was requested:

- a. Report A - 960801 to 970731 (AN) - Reference (b) applies
- b. Report B - 970801 to 980731 (AN) - Reference (b) applies

2. The petitioner contends the Reporting Senior of record for both reports, [REDACTED], was not his immediate supervisor. In his statement, the petitioner indicates the NASA Center Director acted as the Reporting Senior to elevate the credibility of fitness reports. This, he argues, resulted in inadvertent adversity owing to ranking junior astronauts with those of the same grade who had tenure. To support his appeal, the petitioner furnishes letters from both the current and former Senior Marine officers at the NASA Astronaut Office, Johnson Space Center. Also supplied with reference (a) are replacement fitness reports authored by [REDACTED] USN (Report A), and [REDACTED] JAF (Report B).

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

- a. At the outset, the Board emphasizes that when the petitioner signed Item 22 of both reports, he certified that the information in Section A of those documents was correct. This includes, but is definitely not limited to, identification of the Reporting Senior of record. Had there been any question as to [REDACTED] designation as the petitioner's legitimate

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

Reporting Senior, it should have been surfaced and resolved at that time. To wait until incurring a failure of selection to question such a serious issue lacks both timeliness and credibility.

b. Notwithstanding the foregoing, the Board is simply not persuaded or otherwise convinced by the arguments presented. The final sentence in paragraph two of Colonel [REDACTED] letter of 6 June 2001 is especially pertinent and solidifies the validity of the challenged fitness reports. To wit: "Although I corrected this during my tenure as Senior Marine, the two subject fitness reports were submitted prior to making this change." Simply stated, the fitness reports at issue were written per the established fitness reporting chain at the Johnson space Center. This was totally within the spirit and intent of references (b) and (c) and was equally applicable for the other three Marine majors reported on by [REDACTED]

c. Reports A and B were accepted by this Headquarters as valid and pro forma administratively reviewed since there was no one to assume Reviewing Officer responsibility. As a matter of information, it would have been appropriate for Colonel [REDACTED] as the Senior Marine at the Center, to have added a Standard Addendum Page to the reports and provided commentary on Marine-peculiar responsibilities per subparagraph 6009.2 of references (b) and (c). He did not do so, and such an omission does not invalidate either report.

d. The revised reports submitted by Captain [REDACTED] and Colonel [REDACTED] are exact Section B, grades and verbatim Section C comments of the reports they are supposed to replace, allegedly as evaluations that "more accurately" portray the petitioner's performance. Essentially, the only new/revised information is found in the petitioner's ranking on each report.

e. Nowhere in Colonel [REDACTED] letter does he detail the Reporting Senior/Marine Reported on relationship between Captain [REDACTED] and the petitioner. Further, there are no statements from either Captain [REDACTED] or Colonel [REDACTED] attesting to their job tasking relationship to the petitioner. Even if the Board accepted the argument that Captain Ashby and Colonel [REDACTED] are the proper Reporting Seniors, nothing documents that either officer (in distinctly different billets)

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR

[REDACTED]

worked directly for Colonel [REDACTED] thus resulting in his designation as the rightful Reviewing Officer of the two replacement [REDACTED]

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Major [REDACTED]'s 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
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

1416-0

IN REPLY REFER TO:
1600
MMAA-4
26 Feb 02

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
[REDACTED] MC of
[REDACTED]

1. Recommend disapproval of [REDACTED] implied request for
removal of his failure of selection.

2. Per the reference, we reviewed [REDACTED] record and
petition. [REDACTED] failed selection on the FY-02 USMC
Lieutenant Colonel Selection Board. Subsequently, the
Performance Evaluation Review Board (PERB) denied his request
for removal of the Annual fitness reports of 960801 to 970731
and 970801 to 980731.

3. In our opinion, [REDACTED] record, as it appeared
before the board, 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 failure of selection. Since the
unfavorable PERB action did not change the competitiveness of
the record, we recommend disapproval of [REDACTED] implied
request for removal of his failure of selection. (3)

4. POC is Major [REDACTED]

[REDACTED]

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