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

BIG  
Docket No: 7470-02  
4 September 2002

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

Subj: MA [REDACTED], JR., USM [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 31 May 02 w/attachments  
(2) HQMC MMER memo dtd 2 Jul 02 w/encl  
(3) HQMC MMOA-4 memo dtd 20 Jun 02  
(4) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that his naval record be corrected by removing the fitness report for 2 October to 12 November 1996 (copy at Tab A to enclosure (1)). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness report. Petitioner further requested removing his failure of selection by the Fiscal Year 2003 Lieutenant Colonel Selection Board, to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Geisler and Kim and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 29 August 2002, 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 would have merit and warrant favorable action, if the entire contested fitness report were removed, or if the report were amended by removing the reviewing officer comments.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the PERB action, which directed completely removing the contested fitness report, and the advisory opinion at 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 lieutenant colonel 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.

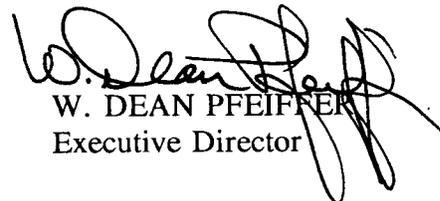
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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  
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.

  
W. DEAN PFEIFFER  
Executive Director



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

7470-02

IN REPLY REFER TO:  
1610  
MMER  
2 Jul 02

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

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

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 15 Aug 02  
(2) CMC Advisory Opinion 1610 MMOA-4 of 20 Jun 02  
(3) Copy of CMC ltr 1610 MMER/PERB of 15 Aug 02

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED] official military record, the fitness report for the period 961002 to 961112 (TR).

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

3. By enclosure (3), this Headquarters provided Major [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

1990

1610  
MMER/PERB  
AUG 15 2002

From: Commandant of the Marine Corps  
To: [Redacted] MC  
[Redacted] 285

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>
25 Nov 96	[Redacted]	961002 to 961112 (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 them, 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.

[Redacted Signature]

By direction



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

7470-02

IN REPLY REFER TO:

1600  
MMAA-4  
20 Jun 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  
[REDACTED] USMC  
of 10 Jun 02

1. Recommend approval of [REDACTED]'s request for removal of his failure of selection if the petitioned report or the report's Reviewing Officer comments are expunged.
2. Per the reference, we reviewed [REDACTED]'s record and petition. [REDACTED] failed selection on the FY03 USMC Lieutenant Colonel Selection Board. Subsequently, he petitioned the Performance Evaluation Review Board (PERB) to remove the Transfer fitness report from 961002 to 961112. [REDACTED] requests removal of his failure of selection.
3. The Reviewing Officer comments in the petitioned fitness report contained some competitive concerns that may have contributed to the failure of selection. Although [REDACTED] record does lack operational credibility as a field grade, removal of the Reviewing Officer comments increases the competitiveness of his record. Given a favorable board action to remove the petitioned report or the Reviewing Officer comments, we recommend approval of his request for removal of his failure of selection.
4. Point of contact is Major [REDACTED].

[REDACTED]

Lieutenant Colonel, USMC  
Head, Officer Counseling and  
Evaluation Section  
Personnel Management Division