



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

BJG
Docket No: 4367-03
6 August 2003

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

Subj: **MI [REDACTED] USMC [REDACTED]**
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 25 Mar 03 w/attachment
(2) HQMC MMER memo dtd 20 May 03 w/encl
(3) HQMC MMOA-4 memo dtd 16 Apr 03
(4) Memo for record dtd 6 Jun 03
(5) 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 reviewing officer (RO) remarks from the fitness report for 1 October 1992 to 30 March 1993, a copy of which is at Tab A to enclosure (1). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the following RO remarks from the contested fitness report:

Lower marks in Additional Duties and Attention to Duty reflect poor accounting procedures for company social fund which led to significant overexpenditure [sic]. More an error of inexperience than inattention, but a significant error nonetheless. He has learned from this and he has my complete trust.

Petitioner further requested removal of his failure of selection before the Fiscal Year 2004 Lieutenant Colonel Selection Board, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of lieutenant colonel as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Bishop, Neuschafer, and Schultz, reviewed Petitioner's allegations of error and injustice on 31 July 2003, and pursuant to its regulations, determined that the limited 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. Petitioner has requested that all of the RO remarks be removed from the fitness report for 1 October 1992 to 30 March 1993. The remarks whose removal has not been directed are as follows:

Concur with RS [reporting senior]. This is a fine young Captainwho [sic] has served very well as an SPC [staff platoon commander]...Of 90 + high quality captains currently assigned to staff of TBS [The Basic School], [Petitioner] ranks in the middle third. I personally select all SPC's and my confidence in [Petitioner] is demonstrated by my selection of him for SPC in follow-on company where I am certain that he will excel.

c. In correspondence attached as enclosure (2), the HQMC PERB has commented to the effect that the RO remarks quoted in paragraph 1 above were to be removed, but that the remaining RO comments should stand because they "are positive and reflect favorably on the petitioner's abilities."

d. In correspondence attached as enclosure (3), the HQMC Officer Counseling and Evaluation Section, Personnel Management Division (MMOA-4), the 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 removing all the contested RO remarks, as Petitioner requested, would support removing his failure of selection.

e. The memorandum for the record at enclosure (4) shows that a member of the Board's staff contacted MMOA-4 and was informed they conclude that the limited relief PERB provided is sufficient to warrant removal of Petitioner's failure of selection.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting limited relief, specifically, removal of Petitioner's failure of selection to lieutenant colonel. The Board agrees with the PERB report at enclosure (2) in concluding that no further RO remarks should be removed. In view of the above, the Board directs the following limited correction 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.

d. That Petitioner's request to remove the remaining RO remarks from the fitness report for 1 October 1992 to 30 March 1993 be denied.

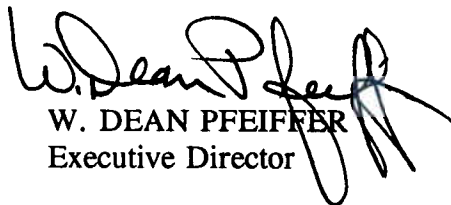
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's 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

4267-6
IN REPLY REFER TO:
1610
MMER/PERB
MAY 20 2003

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: (a) Major [REDACTED] DD Form 149 of 25 Mar 03
(b) MCO P1610.7C w/Ch 1-5

Encl: (1) CMC Advisory Opinion 1600 MMOA-4 of 16 Apr 03

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 15 May 2003 to consider Major [REDACTED] petition contained in reference (a). Removal of the Reviewing Officer's Remarks included with the fitness report for the period 921001 to 930330 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the Reviewing Officer's remarks meet the criteria for "adverse material", and as such, should have been referred to him for acknowledgement and the opportunity to respond.

3. In its proceedings, the PERB concluded that:

a. As contended, Colonel [REDACTED] Reviewing Officer's Remarks contain "adverse" comments. They are: "Lower marks in Additional Duties and Attention to Duty reflect poor accounting procedures for company social fund which led to significant overexpenditure. More an error of inexperience than inattention, but a significant error nonetheless. He has learned from this and he has my complete trust." The Board does not, however, agree with the petitioner that complete removal of the Reviewing Officer's comments is warranted. Instead, they have directed elimination of the verbiage identified above.

b. The Board concluded that the remainder of Colonel [REDACTED] comments are positive and reflect favorably on the petitioner's abilities. As such, they should remain.

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

4. The Board's opinion, based on deliberation and secret ballot vote, is that the modified version of the contested Reviewing Officer's Remarks should remain a part of [REDACTED] official military record. The limited corrective action identified in subparagraph 3a is considered sufficient.

5. The enclosure is furnished to assist in adjudicating Major [REDACTED] request for the removal of his failure of selection to the grade of Lieutenant Colonel.

6. The case is forwarded for final action.

[REDACTED]
[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

436702
IN REPLY REFER TO:

1600
MMA-4
16 Apr 03

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

Subj: BCNR PETITION FOR [REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] USMC
of 28 Mar 03.

1. Recommend approval of Major [REDACTED] request for removal of his failure of selection if the petitioned comments are removed from his record.

2. Per the reference, we reviewed Major [REDACTED] record and petition. Major [REDACTED] failed selection on the FY04 USMC Lieutenant Colonel Selection Board. He has petitioned the Performance Evaluation Review Board (PERB) to remove the reviewing officer's comments from the Transfer report from 921001 to 930330. Major [REDACTED] also requests removal of his failure of selection.

3. In our opinion, if the PERB does remove the petitioned comments, it would marginally increase the competitiveness of the record. With the petitioned comments removed, Major [REDACTED] record still contains considerable competitive jeopardy in the following areas:

- a. **MOS Credibility.** Major [REDACTED] record lacks MOS credibility as a field grade officer. Unlike the majority of his peers, [REDACTED] has not served in the operating forces as a field grade officer and as a company grade officer he only served seven months as a battery commander.
- b. **Value and Distribution.** [REDACTED] rankings are five marked above and seventeen marked below as a Lieutenant. His rankings are eleven marked above and ten marked below as a Captain. His total rankings are sixteen marked above and twenty seven marked below him. His rankings got less competitive as he gained in rank.

4. In summary, favorable PERB action would marginally improve the competitiveness of [REDACTED] record. Though we recognize his record contains other areas of competitive concern, we believe [REDACTED] should be afforded the

Subj: BCNR PETITION FOR MAJOR [REDACTED] USMC

benefit of the doubt and recommend approval of his request for removal of his failure of selection.

5. POC is [REDACTED] at [REDACTED]

[REDACTED]

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

DEPARTMENT OF THE NAVY
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MEMORANDUM FOR THE RECORD

DATE: 6JUN03

DOCKET NO: [REDACTED]

PETITIONER (PET) [REDACTED], USMC

PARTY I CALLED [REDACTED], USMC, HQMC MMOA-4

TEL #: N/A

WHAT I SAID: I ASKED LT [REDACTED] WHAT IMPACT, IF ANY, THE PERB RELIEF WOULD HAVE ON PET'S COMPETITIVENESS FOR PROM.

WHAT PARTY SAID: LT CO [REDACTED] INFORMED ME THAT THE LTD RELIEF PERB PROVIDED WAS SUFFICIENT TO JUSTIFY REMOVING PET'S FOS.

B. George

BRIAN J. GEORGE