



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

BJG

Docket No: 166-09

25 November 2009

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Forms 149 (2), each dtd 20 Sep 08 w/atch  
(2) HQMC MMR/PERB memo dtd 6 Jan 09  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the fitness report for 23 October 2007 to 8 January 2008 be modified, in accordance with the reporting senior's (RS's) letter dated 14 October 2008, by raising the marks in sections F.1 ("Leading Subordinates"), G.2 ("Decision Making Ability"), and G.3 ("Judgment") from "D" (fourth best of seven possible marks) to "E" (third best); and that the fitness report for 28 February to 30 June 2008 be modified, in accordance with the RS's letter dated 11 November 2008, by raising the mark in section G.1 ("Professional Military Education (PME)") from "D" to "E." Copies of the fitness reports in question are at Tabs A and B, respectively.

2. The Board, consisting of Mses. Colbert and McCormick and Mr. Vogt, reviewed Petitioner's allegations of error and injustice on 24 November 2009, 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Both of the RS's letters (with Petitioner's applications at enclosure (1)) indicate that the purpose for raising Petitioner's marks was to give him a higher relative value. However, in paragraph 3 of the RS's letter dated 11 November 2008, addressing the fitness report for 28 February to 30 June 2008, he gave the following justification for raising the mark in section G.1 from "D" to "E":

During this period [Petitioner] completed the Advance Course. For all Gunnery Sergeant's [sic] I have previously reviewed, having all PME completed equated to the above comparative assessment ["E"]. This can be validated by referencing [Petitioner's] previous TD [to temporary duty] report [report for 23 October 2007 to 8 January 2008], in which his marking was a D. With the completion of all his PME [Petitioner's] comparative should have been moved to the right [raised]. This is purely my administrative oversight.

d. In enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has commented to the effect Petitioner's request should be denied. The PERB found that the RS was merely attempting to "game the system" by raising Petitioner's relative value.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an error warranting partial relief, specifically, the requested modification of the fitness report for 28 February to 30 June 2008. In this regard, the Board finds the justification quoted at paragraph 3.c above to be persuasive.

Regarding the report for 23 October 2007 to 8 January 2008, the Board concurs with the PERB. Although the Board votes not to modify this report, Petitioner may submit the RS's letter dated 14 October 2008 to future selection boards.

In view of the above, the Board recommends the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying as follows the fitness report for 28 February to 30 June 2008, dated 10 July 2008 and signed by Captain Timothy P. Maloney, United States Marine Corps:

Section G.1 ("Professional Military Education (PME)":  
Raise mark from "D" to "E."

b. That the magnetic tape maintained by HQMC be corrected accordingly.

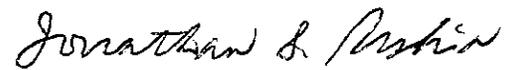
c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries be added to the record in the future.

d. 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.

e. That the remainder of Petitioner's request be denied.

4. 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. The foregoing report of the Board is submitted for your review and action.

  
W. DEAN PFEIFFER

Reviewed and approved:

 12/09/09  
**Assistant General Counsel  
Manpower and Reserve Affairs)**