



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

BJG
Docket No: 1229-09
25 June 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 Form 149 dtd 18 May 07 w/attachments
(2) HQMC MMER/PERB memo dtd 15 Jun 09
(3) HQMC MMER/PERB memo dtd 13 Aug 07
(4) HQMC MMOA-4 memo dtd 28 Sep 07
(5) Memo for record dtd 9 Feb 09
(6) 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 that his naval record be corrected by removing the fitness report for 1 July 2001 to 7 January 2002, a copy of which is at Tab A. Enclosure (2) shows that the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing this report. He also impliedly requested removing his failure of selection by the Fiscal Year (FY) 2008 Lieutenant Colonel Selection Board, so that he would be considered by the selection board that next convened to consider officers of his category for promotion to the grade of lieutenant colonel as an officer who had not failed of selection to that grade. After he had submitted his application, he also failed of selection by the FY 2009 and 2010 Lieutenant Colonel Selection Boards. It is presumed he desires removing all his failures of selection to lieutenant colonel.

2. The Board, consisting of Messrs. Koman, Leeman and Shy, reviewed allegations of error and injustice on 10 February 2009, and pursuant to its regulations, determined that relief should be granted. Documentary material considered by the Board consisted of the enclosures (except enclosure (2)), 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. As shown in enclosure (3), the HQMC PERB initially directed modifying the contested fitness report by removal of the following comments from section I (reporting senior (RS)'s "Directed and Additional Comments"): "At times, in multi-tasking environment, becomes distracted by inconsequential matters/information. In handling simultaneous missions, ability to translate intent into completed action requires more concerted attention on mission analysis, subsequent prioritization - focus on desired endstate [sic]." The PERB also directed removing the following from section K.4 (reviewing officer (RO) comments): "while his RS accurately points out challenges in the area of focus and prioritization, he has worked hard to learn and grow."

c. In enclosure (4), the HQMC Officer Counseling and Evaluation Section, Manpower Management Division has commented to the effect that the fitness report modifications initially directed by the PERB warranted removing Petitioner's failure of selection by the FY 2008 Lieutenant Colonel Selection Board, although his record "contained other areas of competitive concern (specifically, his marginal MOS [military occupational specialty] credibility as a Major [sic] at the time of the [FY 2008 Lieutenant Selection] Board and the low relative value and RO comparative assessment for the petitioned report."

d. Enclosure (5) verifies Petitioner's fitness report record before the FY 2009 and 2010 Lieutenant Colonel Selection Boards reflected the modifications initially directed by the PERB.

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 full relief.

The Board finds Petitioner's failure of selection by the FY 2008 Lieutenant Colonel Selection Board should be removed in concurrence with enclosure (4), which concluded that the initial PERB action supported removing that failure. The Board

further notes that enclosure (4) cited the low marks in the report at issue as a factor that harmed his competitiveness for promotion.

The Board finds Petitioner's FY 2009 and 2010 failures should be removed as well, since the marks cited above were in his record for both of the promotion boards concerned, and removing all failures is necessary to restore Petitioner to the status he enjoyed, before the FY 2008 Lieutenant Colonel Selection Board, as an officer who had not failed of selection.

In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

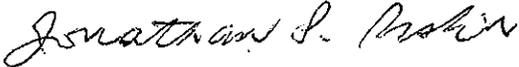
a. That Petitioner's naval record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

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.

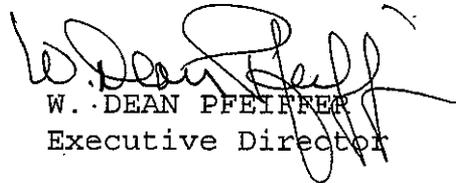
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's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