



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

JSR

Docket No: 2319-09

4 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 10 Mar 09 w/attachment
(2) Fitness rept for 1 Jun 03 to 31 May 04
(3) HQMC MMOA-4 memo dtd 6 Apr 09
(4) Subject's ltrs dtd 21 Apr 09,
30 May 09 w/encls and 1 Jun 09 w/encl
(5) 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 his naval record be corrected by removing his failures of selection before the Fiscal Year (FY) 2008 and 2009 Lieutenant Colonel Selection Boards, so as 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 for promotion to that grade. After having submitted his application, he also failed of selection by the FY 2010 Lieutenant Colonel Selection Board. It is presumed he desires removing that failure of selection as well.

2. The Board, consisting of Mses. Colbert, LeBlanc and Prevatt, reviewed Petitioner's allegations of error and injustice on 4 June 2009, 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 which were available under existing law and regulations within the Department of the Navy.

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

c. On 15 May 2008, after Petitioner had failed of selection by the FY 2008 and 2009 Lieutenant Colonel Selection Boards, he applied for correction of his fitness report record. By letter of 13 August 2008, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board advised Petitioner they had granted his request, to remove the fitness report for 1 June 2003 to 31 May 2004 (copy at enclosure (2)) and modify the report for 29 September to 10 December 1999 (copy at Tab A) by removing, from section I (reporting senior's "Directed and Additional Comments"), "SNO [subject named officer] has unrealized potential." and removing, from section K.4 (reviewing officer's comments), "Second tour aviator that did not upgrade to TPC [topographic production capability], due to requesting orders to OSO [officer selection officer] duty." His record was corrected before the FY 2010 Lieutenant Colonel Selection Board convened, however, he failed of selection once again.

d. The advisory opinion at enclosure (3) recommended that Petitioner's request be denied, as his selection to lieutenant colonel would have been definitely unlikely in any event. That opinion stated the removed fitness report "represented [Petitioner's] only key MOS [military occupational specialty] department head time as a Major prior to the FY08 and FY09 Promotion Boards." and added "Without that key billet his MOS credibility rests solely on his previous billet experience as the Aircrew Training Officer, a supporting role to the Operations department, where he was evaluated with a Relative Value below average. The remainder of his time as a Major was spent in the Officer Recruiting field and would not enhance his aviator's competitiveness." Finally, the opinion stated Petitioner did not exercise due diligence in correcting a two-month date gap in his fitness reports and a missing administrative certificate.

e. Enclosure (4), Petitioner's reply to the advisory opinion, maintains his belief that he might well have been competitive for promotion when he was first considered for promotion, but for the fitness report that has been removed. He contended that the two-month date gap and the lack of Forward Air Controller MOS designation, by reason of a lost certificate, "were most certainly completely inconsequential as to [his]

being passed over." He provided letters on his behalf from seven officers to the upcoming FY 2011 Lieutenant Colonel Selection Board. One of these, from the reporting senior who submitted the fitness report for 2 May 2002 to 31 May 2003 to which the advisory opinion alludes, states it was an "oversight" on his part that the report reflects a below average Relative Value.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (3), the Board finds an injustice warranting the requested relief. The Board is unwilling to speculate that Petitioner's selection would have been definitely unlikely, even with a corrected fitness report record. The Board notes that his failure of selection by the FY 2010 Lieutenant Colonel Selection, before which his record had been corrected, must be removed to restore him to his status before the FY 2008 promotion board as an officer who had not failed of selection. In view of the above, the Board recommends 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 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. 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.

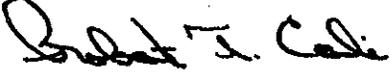
ROBERT D. ZSALMAN
Recorder


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:


6-15-02