



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

JSR
Docket No. 2457-09
30 April 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 25 Feb 09 w/attachments
(2) Subject's fitrept for 1 Feb to 4 Apr 06
(3) HQMC MMOA-4 memo dtd 2 Apr 09
(4) 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 that his naval record be corrected by removing his failure of selection before the Fiscal Year (FY) 2009 Captain Selection Board, so as to be considered by the selection board that next convened to consider officers of his category for promotion to the grade of captain as an officer who has not failed of selection to that grade. He further impliedly requested, in the event of his failure of selection by the FY 2010 Captain Selection Board, convened on 21 January 2009, removing that failure of selection as well and setting aside action to effect his discharge by reason of having twice failed of selection to captain.

2. The Board, consisting of Ms. Humberd and Messrs. Bowen and Zsalman, reviewed Petitioner's allegations of error and injustice on 30 April 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 available under existing law and regulations within the Department of the Navy.

b. After Petitioner had failed of selection by the FY 2009 Captain Selection Board and the FY 2010 Captain Selection Board had convened, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing the adverse fitness report at enclosure (2).

c. In enclosure (3), the HQMC office with cognizance over the subject matter concerned commented to the effect that the PERB action warranted removing Petitioner's failure of selection by the FY 2009 Captain Selection Board and, if he fails of selection by the FY 2010 Captain Selection Board, removing that failure of selection as well.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of 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 captain as an officer who has not failed of selection for promotion to that grade.

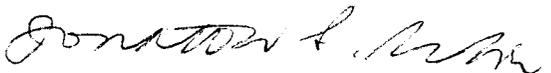
b. That any discharge or other action based in any way on Petitioner's failure of selection before the FY 2009 Captain Selection Board be cancelled and, if necessary, that related documentation be removed from his record.

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 or material 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.

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