



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

JSR  
Docket No. 2509-09  
26 March 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 4 Mar 09 w/attachment  
(2) HQMC MMOA-4 memo dtd 9 Mar 09  
(3) 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 his failures of selection before the Fiscal Year (FY) 2009 and 2010 Major Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade. Because of the failures of selection for promotion, he is scheduled to be involuntarily discharged from the Regular Marine Corps on 1 August 2009.

2. The Board, consisting of Messrs. W. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 26 March 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. Petitioner's fitness report for 19 May 2006 to 28 May 2007 (copy at Tab A) was missing for both the FY 2009 and 2010 Major Selection Boards, by which he failed of selection.

c. In correspondence attached as enclosure (2), the Headquarters Marine Corps office with cognizance over the subject matter of Petitioner's case has commented to the effect that his request has merit and warrants favorable action. That office concluded Petitioner had exercised due diligence to try to get the fitness report in question entered in his record; that its absence was a likely contributor to his FY 2009 failure of selection; and that even though he probably would have failed before the FY 2010 promotion board in any event, as it is unlikely his then current photo was available, both failures should be removed because Petitioner might have been selected by the first board, had the missing report been in the record.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (2), the Board finds the existence of an injustice warranting 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 major 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 failures of selection before the FY 2009 and 2010 Major Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.

e. 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.

f. 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. 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