



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

BJG

Docket No: 3363-09

10 April 2009

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD (PARTIAL RECONSIDERATION)

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

Encl: (1) DD Form 149 dtd 24 Jun 08 w/attachments  
(2) BCNR ltr JSR Docket No: 7860-08  
dtd 18 Sep 08 w/enclosure  
(3) HQMC MMER/PERB memo dtd 26 Mar 09  
(4) HQMC MMOA-4 memo dtd 27 Mar 09  
(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 that his naval record be corrected by removing the fitness report for 5 January to 29 February 2000, a copy of which is at Tab A. As shown in enclosure (2), the Board denied this request on 18 September 2008. As indicated in enclosure (3), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing this report. Petitioner further requested removing his failures of selection by the Fiscal Year (FY) 2009 and 2010 Major Selection Boards, so that he will be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of major as an officer who has not failed of selection 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. Fales, Grover and Washington, reviewed allegations of error and injustice on 9 April 2009, and pursuant to its regulations, determined that relief should be granted. 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. In enclosure (4), the HQMC Officer Counseling and Evaluation Section, Personnel Management Division has commented to the effect that the PERB action warrants removing Petitioner's failures of selection to major.

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 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.

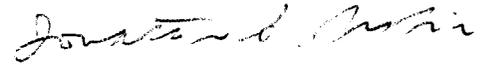
b. That any discharge or other action based in any way on Petitioner's failures of selection before the Fiscal Year 2009 and 2010 Major Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.

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 PREIFFER  
Executive Director