



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

BJG
Docket No: 8270-09
14 August 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 Mar 09 w/attachments
(2) HQMC MMER/PERB memo dtd 26 Jun 09
(3) HQMC MMOA-4 memo dtd 21 Jul 09
(4) Subject's naval record

. 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 modifying the fitness report for 1 August 2007 to 31 May 2008 by deleting, from section K.4 (reviewing officer (RO) comments), "I ranked this officer 3 of 3 of all Captains [sic] that I am the RO for during this reporting period." A copy of the fitness report in question is at Tab A to enclosure (1). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed the requested modification. Finally, he requested removing his failure of selection by the Fiscal Year (FY) 2010 Major Selection Board, 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.

2. The Board, consisting of Messrs. W. Hicks, Spooner and Swarens, reviewed allegations of error and injustice on 13 August 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 Petitioner's previous case, docket number 8849-08 (copy of Report of Proceedings in enclosure (1)), the PERB and this Board directed modifications of the fitness reports for 1 November 2003 to 30 April 2004 and 1 May to 13 September 2004. However, these corrections were not effected in time for the FY 2010 Major Selection Board.

c. In enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to remove his failure of selection for promotion has commented to the effect that his request has merit and warrants favorable action, because of the corrective actions in his current and previous cases.

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 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 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.

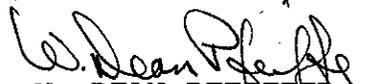
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's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