



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

JSR
Docket No. 12156-09
10 December 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 1 Jun 05, Subject's e-mail
dtd 29 Oct 09 and DD Form 149 dtd 23 Apr 09
(2) HQMC MMER/PERB memo dtd 3 Nov 09
(3) HQMC MMER/PERB memo dtd 3 Nov 09
(4) HQMC CMT memo dtd 12 Nov 09
(5) 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 modifying the fitness report for 19 January to 31 July 2003 by removing section K (reviewing officer (RO) marks and comments). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has effectively granted this relief by directing that the mark in section K.1 ("Observation") be changed from "Sufficient" to "Insufficient," and that the mark in section K.3 (RO's "Comparative Assessment") and the comments in section K.4 ("Reviewing Officer Comments") be removed. Petitioner further requested completely removing the fitness report for 6 August 2007 to 30 June 2008. Enclosure (3) shows the PERB has directed removing this report. Copies of the fitness reports in question are at Tabs A and B, respectively. Finally, Petitioner requested removing his failures of selection before the Fiscal Year (FY) 2007 through 2010 Active Reserve (AR) Lieutenant Colonel Selection Boards, leaving in his record his failure of selection by the FY 2004 AR Lieutenant Colonel Selection Board, as this promotion board convened on 19 November 2002, before either of the contested fitness reports had been submitted (his failures of selection by the FY 2005 and 2006 AR Lieutenant

Colonel Selection Boards were removed by action of this Board in one of Petitioner's previous cases, docket number 9895-04).

2. The Board, consisting of Messrs. Garst, Leeman and Mann, reviewed Petitioner's allegations of error and injustice on 10 December 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. In correspondence attached as enclosure (4), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failures of selection by the FY 2007-2010 AR Lieutenant Colonel Selection Boards has commented to the effect that this request has merit and warrants favorable action.

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:

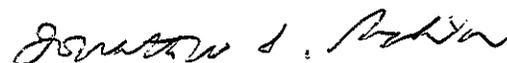
a. That Petitioner's record be corrected by removing his failures of selection by the FY 2007 through 2010 AR Lieutenant Colonel Selection Boards, leaving in his record his failure of selection by the FY 2004 AR Lieutenant Colonel Selection Board.

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. 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