



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

JSR  
Docket No. 12759-09  
19 February 2010

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 22 Jul 09 w/attachment  
(2) HQMC MMER/PERB memo dtd 3 Dec 09  
(3) Subject's ltr dtd 7 Feb 10  
(4) 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, in effect, that the applicable naval record be corrected by removing therefrom the fitness report for 5 September 2008 to 16 April 2009. A copy of this report is at Tab A.

2. The Board, consisting of Messrs. W. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 19 February 2010, 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. The contested fitness report, evaluating Petitioner's performance as the operations officer of Marine Air Combat Group (MACG)-28, is not designated as adverse by a mark in item 5.a of

section A. Of the 13 observed marks the reporting senior (RS) assigned Petitioner, 10 are "B" (second lowest of seven possible marks) and three are "C" (third lowest). Section C ("Billet Accomplishments") reads as follows:

- Led planning effort for the OIF [Operation Iraqi Freedom] 09 workup exercises.
- Completed TPFDD [Time-Phased Force and Deployment Data] for the Group HQ [Headquarters] and four subordinate squadrons deployment to OIF. Efforts resulted in correct flow of personnel and equipment into theater.
- Led planning effort for MACG-28 Detachment deployment to Weapons and Tactics Instructor (WTI) Course 1-09.
- Participated in planning effort for MACG-28 Detachment deployment to DESERT TALON exercise.
- Managed limited rifle range quotas due to range closure and met annual training requirements for the Group HQ and subordinate squadrons and battalion.

Section I (RS's "Directed and Additional Comments") reads as follows:

- Intelligent and competent staff officer.
- Qualified and experienced, MRO [Marine reported on] served as my S3 [staff operations officer] during a challenging period as the Group prepared for simultaneous deployments to OIF/OEF [Operation Enduring Freedom].
- Knowledgeable air C2 [command intelligence officer], MRO achieved results in assigned tasks.
- Adept at coordinating issues with higher headquarters.
- I would rank MRO #12 of 12 LtCols [lieutenant colonels] currently assigned to my Group.
- Demonstrates potential for success and productive service.

In section K.3 (reviewing officer (RO)'s "Comparative Assessment"), Petitioner was assigned the third lowest of eight possible marks, with no peers marked lower. Section K.4 (RO's comments) reads as follows:

- Seasoned operations officer with a solid grasp of C2 matters.
- Expertise proved helpful as the Wing prepared for OIF/OEF deployments.
- Strong team builder who works well with peers and

subordinates.

- Screened/slated for squadron command, MRO is ready for the opportunity and challenge.

d. Petitioner contends that the contested fitness report violates the applicable fitness report order, Marine Corps Order P1610.7F, in that it reflects "faint praise"; the marks reflect marginal performance without any corroboration in the narrative; the last two bullets in section I are adverse comments that were not referred to him, as they should have been, for his acknowledgment and an opportunity to make a statement; the flaws attributable to the RS unfairly prejudiced the mark assigned in section K.3; the marks are inconsistent with the comments in sections C, I and K; Petitioner was never counseled on his performance, so the report at issue came as a surprise to him; and the report was unduly vague. He also contends that he and the RS were not physically close, so the RS may not have been fully aware of the key role Petitioner had played in MACG-28's operational performance.

e. Enclosure (2) is the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case. The report reflects the PERB decision to deny his request. The PERB found no merit in any of his contentions. Concerning the RS's comment that he ranked Petitioner number 12 of 12 lieutenant colonels assigned to the Group, the PERB said "it's quite possible that all 12 are stellar performers," so the comment is not inherently adverse. The PERB did not expressly address Petitioner's contentions that the last bullet in section I is adverse; that the marks are inconsistent with the comments in sections C, I and K; that Petitioner was never counseled on his performance; and that the contested report is unduly vague.

f. Enclosure (3) is Petitioner's response to the PERB report, reflecting his virtually complete disagreement.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds an injustice warranting partial relief, specifically, removal of the last two bullets in section I.

The Board agrees with Petitioner that these are adverse comments that should have been referred to him for acknowledgment and a chance to submit a statement, but were not. Concerning the

ranking comment, the Board notes the report in question does not reflect that the 11 colonels with whom Petitioner was compared were "stellar performers." The Board finds referring the report to Petitioner at this late date would not provide adequate relief.

The Board otherwise substantially concurs with the PERB report. The Board finds that the marks and comments of the contested report are not inconsistent; that the report gives no indication of any deficiency that would have required counseling; that the report does not reflect "faint praise"; and that the report is sufficiently specific. The Board finds that upon removal of the last two bullets from section I, the remainder of the report is valid and should remain in Petitioner's record.

In view of the above, the Board recommends the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the last two bullets from section I of the fitness report for 5 September 2008 to 16 April 2009, dated 18 April 2009 and signed by Colonel [REDACTED] USMC. The bullets to be removed read as follows:

- I would rank MRO #12 of 12 LtCols currently assigned to my Group.
- Demonstrates potential for success and productive service.

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 this 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.

d. That the remainder of Petitioner's request be denied.

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*  
JONATHAN S. RUSKIN  
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

*W. Dean Pfeiffer*  
W. DEAN PFEIFFER

Reviewed and approved:

*Robert L. Wood* 2/23/10

Assistant General Counsel  
(Manpower and Reserve Affairs)