



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

JSR
Docket No: 4645-10
28 May 2010

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 31 Mar 10 w/attachments
(2) HQMC MMOA-4 memo dtd 24 May 10
(3) 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 his naval record be corrected by removing his failures of selection for promotion before the Fiscal Year (FY) 2010 and 2011 Lieutenant Colonel Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

2. The Board, consisting of Messrs. Bowen, Chapman and Garst, reviewed Petitioner's allegations of error and injustice on 28 May 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. After Petitioner had failed of selection by the FY 2010 Lieutenant Colonel Selection Board, he successfully petitioned

b. After Petitioner had failed of selection by the FY 2010 Lieutenant Colonel Selection Board, he successfully petitioned the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) for modification of the fitness report for 16 July 2007 to 18 April 2008. A copy of the PERB report is in enclosure (1), and a copy of the modified fitness report is at Tab A.

c. In correspondence at enclosure (2), the HQMC office with cognizance over the subject matter of Petitioner's case has commented to the effect his request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (2), the Board finds 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 lieutenant colonel 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 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 732.6(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