



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

JSR
Docket No. 09536-10
27 October 2010

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 dtd 22 Apr 10 w/attachments
(2) HQMC MMER/PERB memo dtd 27 Aug 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 the applicable naval record be corrected by modifying the fitness report for 10 September to 6 October 2007, in accordance with the reviewing officer's (RO's) undated endorsement at enclosure (1), by raising the mark in section K.3 (RO's "Comparative Assessment") from the sixth best of eight possible marks to the fourth best and substituting the following for the original comments in section K.4 (RO's comments):

My assessment of [Petitioner's] performance during this reporting period remains unchanged from my previous report. He is a superb Aviator, Leader and Manager. My highest recommendation for promotion and follow-on operational command.

A copy of the fitness report Petitioner requests modifying is at Tab A. Enclosure (2) shows that the Headquarters Marine Corps Performance Evaluation Review Board (PERB) has directed partial relief, specifically, the requested change to section K.3.

2. The Board, consisting of Ms. Siler and Messrs. Clemmons and Rothlein, reviewed Petitioner's allegations of error and injustice on 27 October 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 original section K.4 comments were as follows:

Concur with RS [reporting senior]. Fine officer and aviator. MRO [Marine reported on] is filling a demanding billet producing future Marine Aviators for the fleet. Exceptional work ethic and forward-leaning attitude, both in the air and on the ground. Recommended for promotion and positions of increased responsibility.

In his endorsement, the RO said the proposed change to section K.3 was the result of his data entry error, but he did not expressly explain the proposed revision to his comments.

d. Enclosure (2) is the report of the PERB in Petitioner's case. The report reflects that the PERB has directed raising the section K.3 mark as Petitioner and the RO requested, but that it "found no injustice created by the favorable comments in the Section K" as "neither the petitioner nor the RS sufficiently proved the current comments to be incorrect."

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds an injustice warranting the requested substitution of comments for section K.4. The Board finds the revised comments are more consistent with the revised mark in section K.3. Accordingly, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying as follows the fitness report for 10 September to 6 October 2007, dated 18 June 2008, and signed by [REDACTED]

- (1) From section K.4, remove the original comments, which read as follows:

Concur with RS. Fine officer and aviator. MRO is filling a demanding billet producing future Marine Aviators for the fleet. Exceptional work ethic and forward-leaning attitude, both in the air and on the ground. Recommended for promotion and positions of increased responsibility.

- (2) In section K.4, enter the following comments in place of those to be removed:

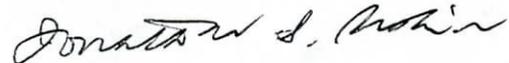
My assessment of Major M---'s performance during this reporting period remains unchanged from my previous report. He is a superb Aviator, Leader and Manager. My highest recommendation for promotion and follow-on operational command.

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.

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


W. DEAN PFEIFFER

Reviewed and approved:

11/2/10



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