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

JSR
Docket No. 191-11
13 January 2011

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 28 Jul 10 w/attachments
(2) HQMC MMER/PERB memo dtd 6 Dec 10
(3) HQMC MMOA-4 memo dtd 22 Dec 10
(4) 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 removing the fitness report for 1 October 2009 to 15 May 2010, a copy of which is at Tab A. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board has directed removing the contested report. Petitioner further requested removing his failure of selection by the Fiscal Year 2011 Chief Warrant Officer 3 (CWO3) Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to CWO3 as an officer who has not failed of selection for promotion to that grade. Finally, he requested consideration by a special selection board. This request was not considered, as Petitioner may submit a request for a special selection board directly to the Secretary of the Navy, via HQMC (MMPR-1), on the basis of the corrective actions in this case by the PERB (removal of fitness report) and this Board (removal of failure of selection for promotion).

2. The Board, consisting of Messrs. Chapman, Dunn and Ivins, reviewed Petitioner's allegations of error and injustice on 13 January 2011, 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. Except as indicated in paragraph 1 above, 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 (3), the HQMC office with cognizance over the subject matter of Petitioner's request to remove his failure of selection for promotion 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 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 CW03 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. 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