



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

JSR
Docket No: 1582-11
10 March 2011

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 12 Jul 10 w/attachments
(2) HQMC MMR/PERB memo dtd 31 Jan 11
(3) HQMC MIO memo dtd 10 Feb 11
(4) HQMC MMOA-4 memo dtd 16 Feb 11
(5) Subject's ltr dtd 4 Mar 11
(6) 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 the fitness reports for 18 June 2007 to 31 May 2008 and 1 June 2008 to 4 June 2009, copies of which are at Tabs A and B, respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed modifying the report for 18 June 2007 to 31 May 2008, by removing the entire section K (reviewing officer's marks and comments), and completely removing the adverse report for 1 June 2008 to 4 June 2009. Petitioner further requested removing the service record page 11e ("Administrative Remarks (1070)") entry dated 7 May 2009, counseling him for substandard performance, and his rebuttal dated 14 May 2009, copies of which are at Tab C. Finally, he requested removing his failures of selection for promotion before the Fiscal Year (FY) 2011 and 2012 Major Selection Boards, so as to be considered by the selection board next convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade. By reason of the failures of selection for promotion, he is scheduled to be involuntarily retired on 1 July 2011.

2. The Board, consisting of Messrs [REDACTED] reviewed Petitioner's allegations of error and injustice on 10

March 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. 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. In enclosure (2), the HQMC PERB has commented to the effect that the remaining contested fitness report for 18 June 2007 to 31 May 2008, as modified by removal of section K, should stand.

d. In enclosure (3), MIO, the HQMC office with cognizance over the subject matter of Petitioner's request to remove the page 11e entry, has commented to the effect this request has merit and warrants favorable action.

e. In enclosure (4), MMOA-4, the HQMC office with cognizance over the subject matter of Petitioner's request to remove his failures of selection to major, has commented to the effect this request should be denied, concluding that without his having completed the professional military education required for his grade, it is definitely unlikely he would have been promoted in any event.

f. Enclosure (5) is Petitioner's letter contending that all the relief he has requested that has not been effected already should be granted.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds an injustice warranting partial relief, specifically, removal of the page 11e entry and the failures of selection for promotion. The Board agrees with enclosure (3) in finding that the page 11e entry should be removed. Notwithstanding enclosure (4), the Board finds that Petitioner's failures of selection to major should be removed as well. In

this regard, the Board particularly notes that his record has been significantly changed by the PERB action, to include removal of an adverse fitness report, and that it is the Board's recommendation to change it further by removing a derogatory counseling entry. The Board is unwilling to accept the MMOA-4 speculation that Petitioner's selection would have been unlikely in any case. Finally, the Board agrees with enclosure (2) in concluding that no further correction of Petitioner's fitness report record is warranted. 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 service record page 11e ("Administrative Remarks (1070)") entry dated 7 May 2009 and his rebuttal dated 14 May 2009. This is to be accomplished by physically removing the page 11 on which the entry appears and the rebuttal, or completely obliterating the entry and rebuttal so they cannot be read, rather than merely lining through them.

b. That his record be corrected further so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade.

c. That any retirement or other action based in any way on Petitioner's failures of selection by the FY 2011 and 2012 Major Selection Boards be cancelled and, if necessary, that related documentation be removed from his record.

d. 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.

e. 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.

f. 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
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:



3/16/11

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