



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No: 3204-20
Ref: Signature date

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

Subj: REVIEW OF NAVAL RECORD IC ██████████ USMC RET,
XXX-XX ██████████

Ref: (a) 10 U.S.C. § 1552
(b) 10 U.S.C. § 628
(c) SECNAVINST 1402.1, Special Selection Boards, Supplemental All-Fully-Qualified-Officers Lists, and Special Board, 29 April 2019
(d) ASN (M&RA) Memo, "Delegation of Authority to the Board for Correction of Naval Records (BCNR) to Direct the Convening of a Special Selection Board (SSB), Supplemental All-Fully-Qualified Officers List (AFQOL), and Special AFQOL," of 28 Nov 17

Encl: (1) DD Form 149 w/enclosures
(2) MCTIMS Printout, Training History: PFT, printed 18 June 2019
(3) USMC DC(M&RA) Memo 1401/2 MMRP-1, subj: Special Selection Board Request in the case of [Petitioner], 13 Feb 20
(4) Petitioner E-mail, subj: Use of EDIPs, 14 Jun 18
(5) CMC Memo 1610 MMRP-13/PERB, subj: Correction of Naval Record, 16 Oct 18
(6) BCNR Docket No. 2838-19, 28 Jun 19
(7) Petitioner Memo, subj: Congressional Inquiry to the Secretary of the Navy for a Special Selection Board in the case of [Petitioner], 18 Jun 19
(8) Master Brief Sheet, printed 6 March 2017

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board) requesting that he be granted a Special Selection Board (SSB) for the Fiscal Year (FY) 2018 USMC Lieutenant Colonel Promotion Selection Board (PSB).

2. The Board reviewed Petitioner's allegations of error or injustice on 30 April 2021 and, pursuant to its regulations, determined that the corrective action indicated below should be taken. As discussed below, I disagree with the Board's conclusion and recommend that you deny Petitioner's request for an SSB. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

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3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of error or injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 27 June 2016, Petitioner participated in a physical fitness test (PFT) and achieved a score of 237. This score was inputted into the Marine Corps Training Information System (MCTIMS) on the same day. See enclosure (2).

c. On 28 June 2016, a PFT score of 208 was erroneously inputted into the MCTIMS for Petitioner. See enclosure (2). Petitioner contends that this error was made due to confusion with another officer with the same name, rank, and military occupational specialty. See enclosure (1).

d. On 23 August 2016, Petitioner failed to be selected (FOS) for promotion by the FY 2018 USMC Lieutenant Colonel PSB. See enclosure (3).

e. On 29 June 2017, Petitioner achieved a PFT score of 245. This score was inputted into the MCTIMS. See enclosure (2).

f. On 22 August 2017, Petitioner was again FOS for promotion by the FY 2019 USMC Lieutenant Colonel PSB. This was Petitioner's second FOS for promotion to lieutenant colonel. See enclosure (3).

g. On 18 March 2018, Petitioner submitted his first request for a SSB. His request was not forwarded for further staffing or consideration by the Secretary of the Navy (SECNAV) because he did not identify any error in his record to justify the request. Petitioner was encouraged to resubmit his request with any additional information if he believed that the facts were not fully presented. See enclosure (3).

h. On 14 June 2018, Petitioner requested that his height and weight be corrected in his record. He noted in this request that the erroneously entry based upon confusion with another officer with the same name and rank. This change was subsequently made. See enclosure (4).

i. By memorandum dated 17 July 2018, Petitioner revised his request for an SSB based upon a "recently discovered" material error of fact in his record. Specifically, he asserted that the PFT score of 208 on 28 June 2016 was inaccurately posted to his Master Brief Sheet (MBS), and therefore considered by the PSB. Petitioner further contended that his record contained additional material errors regarding his recorded height, weight, and martial arts certifications, which he also attributed to confusion with another officer of the same name, rank, and military occupational specialty as Petitioner. Petitioner did not, however, provide any proof to support his contention that his PFT score was incorrect. See enclosure (3).

j. On 7 August 2018, Petitioner again FOS for promotion by the FY 2020 USMC Lieutenant Colonel PSB. See enclosure (3).

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k. By memorandum dated 16 October 2018, the Marine Corps Performance Evaluation Review Board removed a fitness report for the period of 1 February 2003 to 31 March 2003 from Petitioner's record. Enclosure (4).

l. On 24 January 2019, the SECNAV denied Petitioner's revised SSB request of 17 July 2018 because Petitioner failed to demonstrate by a preponderance of the evidence the steps he took to correct his record prior to the convening of the FY 2018 USMC Lieutenant Colonel PSB, or that there were material errors in his record when it was considered by both the FY 2018 and FY 2019 USMC Lieutenant Colonel PSBs.¹ It was noted in this denial that Petitioner provided evidence of the erroneous PFT score with his revised SSB request, but provided no evidence that this information was provided to the PSB. See enclosure (3).

m. By memorandum dated 15 February 2019, Petitioner submitted a second revised SSB request. This request highlighted as the bases for a SSB the same inaccurate PFT score, along with the removal of his fitness report for the period 1 February 2003 to 31 March 2003. He also stated in this request that the correct PFT score was 245, as opposed to 237.² As supporting evidence, Petitioner provided enclosures (2) and (5), both of which were dated after the convening dates of the FY 2018 and FY 2019 PSBs. See enclosure (2).

n. On 14 May 2019, the Board denied Petitioner's request to remove his FOS for the FY 2018, FY 2019, and FY 2020 USMC Lieutenant Colonel PSBs in Docket No. 2838-19. In denying Petitioner's application, the Board noted that the fitness report that was removed from Petitioner's record covered only a brief period of time while he was a second lieutenant, and was 13 years old at the time that Petitioner was screened for promotion to lieutenant colonel. The Board also noted that Petitioner's June 2016 PFT score, regardless of whether it was 208 or 237, was reflected as a "first-class" score for his age group at the time. Accordingly, the Board determined that neither the fitness report nor the PFT score likely contributed to his FOS. See enclosure (6).

o. By memorandum dated 18 June 2019, Petitioner submitted a Congressional inquiry requesting assistance to obtain approval for an SSB from the SECNAV. His request reiterated the same contention that the FY 2018 PSB was provided the wrong PFT score. He also contended that he took "every reasonable step to ensure the accuracy and completeness of [his] record prior to the convening of the FY 18 LtCol Promotion Selection Board." See enclosure (7).

p. By memorandum dated 13 February 2020, the USMC Deputy Commandant for Manpower and Reserve Affairs (DC (M&RA)) recommended that Petitioner's second revised SSB request be denied. In making this recommendation, the Deputy Commandant noted that the concerns raised in Petitioner's second revised SSB request were the same as those raised in his first revised SSB request which was denied by the SECNAV. He also noted that while Petitioner

¹ Enclosure (3) attributes this action to SECNAV, but the record does not contain this specific action. Such action would typically be taken on behalf of SECNAV by the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)).

² It appears from the record that Petitioner's PFT score of 245 was from June 2017. Petitioner does not make the claim in subsequent documentation that his June 2016 score should have been 245.

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provided additional documentary evidence with his second revised SSB request, “none [of the evidence] relate[d] to the relevant time frame of (1) establishing a material error existed and (2) detailing steps [Petitioner] took to remedy his record prior to [the] board’s convene dates.” See enclosure (3).

q. On 2 April 2020, the ASN (M&RA) disapproved Petitioner’s second SSB request pursuant to the recommendation of the DC (M&RA). See enclosure (3).

r. On 20 April 2020, Petitioner requested that the Board grant him a SSB for the FY 2018 USMC Lieutenant Colonel PSB. He asserted that “it was obvious that mistakes were made prior to the FY 18 promotion board, during the FY 18 promotion board, and in the review of [his] request for a Special Selection Board ICO the FY 18 promotion board,” and specifically requested that the Board consider the evidence provided with his Congressional inquiry package on 18 June 2019. In addition to the letter to his representative reiterating the same allegations of error or injustice at enclosure (7), the evidence provided with his Congressional inquiry package included his MBS (enclosure (8)); the history of his PFT entries in the MCTIMS which reflected the score of 208 being entered in his record on 28 June 2016, one day after the score of 237 was entered (enclosure (2)); e-mail traffic reflecting his efforts to update his height and weight in his records in June 2018 and June 2019 respectively, as well as confirmation that mistakes such as that claimed by Petitioner are not uncommon (enclosure (4)); and a letter to the Naval Inspector General noting discrepancies in enclosure (3). See enclosure (1).

s. In accordance with reference (c), “[a]n SSB will not be convened to consider any officer who, by maintaining reasonably careful records, might have discovered and taken steps to correct the error or omission in the official record prior to convening the PSB that considered but did not select the officer.”

t. In accordance with reference (c), the standard of review for granting a SSB when an officer alleges a material factual or administrative error, such as an incorrect PFT score, is whether the officer demonstrated, by a preponderance of the evidence, that the material error “more likely than not .. deprived the officer of a fair and impartial consideration by the board.” The standard for granting an SSB when the officer alleges that the PSB lacked material information is that the information in question was “essential to a substantially accurate, compete, and fair portrayal of the officer’s career.”

u. Reference (d) requires the Board to fully comply with the statutory and regulatory requirements and limits related to SSBs when exercising its delegated authority to direct the convening of a SSB under reference (b).

BOARD CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found sufficient evidence of an injustice to warrant relief.

The Board found no merit to Petitioner’s contention that mistakes were made during the FY 2018 USMC Lieutenant Colonel PSB. Petitioner presented no evidence to establish that the PSB

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failed to properly consider the evidence presented to it. In the absence of evidence to the contrary, the Board applies the presumption of regularity to establish that officials acted properly in the performance of their duties. Accordingly, there is no evidence supporting Petitioner's contention that mistakes were made by the PSB.

The Board also found Petitioner's contention that mistakes were made in the review of his request for a SSB to be without merit. In this regard, the Board reviewed the errors Petitioner highlighted in enclosure (3) in his letter to the Naval Inspector General. To the extent that any of the information cited was erroneous in enclosure (3), those errors were clearly harmless. First, regardless of whether Petitioner's first SSB request was based upon "Lack of Material Information" or "Material Error," the request was lacking in any evidence to support an SSB. Further, the fact that Petitioner's first revised SSB request was forwarded and acted upon by SECNAV negates any relevance to this assertion. Next, by forwarding Petitioner's second revised SSB request for consideration, the Marine Corps provided Petitioner more process in his promotion selection than he was due. Accordingly, his claim that he never authorized his documented SSB request to go forward for consideration was irrelevant. Finally, enclosure (3) makes clear reference to the substance of the documentation that he claims was ignored in the ASN (M&RA)'s denial of his second revised SSB request, and the Congressional inquiry that he asserts was not properly considered was submitted after the SSB request was made. Therefore, Petitioner's assertions that this documentation was ignored in the decision to deny his SSB request is not supported by the evidence.

The Board did, however, conclude that the erroneous PFT score in Petitioner's record "could have made a difference in the competitiveness of his record" before the FY 2018 USMC Lieutenant Colonel PSB. Due to the erroneous PFT score on Petitioner's MBS at the time of the FY 2018 PSB, the Board concluded that Petitioner was denied fair consideration for promotion. The Board further concluded that Petitioner exercised reasonable diligence in ensuring the completeness and accuracy of his record prior to convening of the FY 2018 USMC Lieutenant Colonel PSB. Accordingly, the Board determined that a SSB should be convened to consider Petitioner for promotion as his record should have appeared before the FY 2018 USMC Lieutenant Colonel PSB.

BOARD RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken:

That a FY 2018 USMC Lieutenant Colonel SSB be convened to consider Petitioner for promotion to lieutenant colonel.

EXECUTIVE DIRECTOR'S CONCLUSION:

After careful review and consideration of all of the evidence of record, I disagree with the Board's conclusion. I believe that Petitioner has failed to satisfy the requirements of references (b) and (c). Accordingly, I recommend that the Board's conclusion that a FY 2018 USMC Lieutenant Colonel SSB should be convened to consider Petitioner for promotion to lieutenant colonel be disapproved.

There is no evidence in the record that Petitioner took any action prior to the convening of either the FY 2018 or FY 2019 USMC Lieutenant Colonel PSBs to ensure the accuracy of his records. Reference (c) requires an officer requesting an SSB to “detail the steps the officer took to ensure the completeness and accuracy of his or her record prior to the convening date of the promotion selection board.” Petitioner has failed to provide this information with regard to the FY 2018 USMC Lieutenant Colonel PSB in any of his three SSB requests or in either of his two requests for relief to this Board. He has provided evidence of his efforts to correct his height and weight prior to the FY 2020 PSB, and in doing so demonstrated how simple it would be to provide such documentation of his efforts, but has provided no evidence regarding any effort to correct his PFT score prior to either the FY 2018 or FY 2019 PSBs. It might be reasonable to find that Petitioner had insufficient time between the input of the erroneous PFT score in his record and the convening date of the FY 2018 USMC Lieutenant Colonel PSB to discover and correct the error, but no such excuse can be made for the omission of such efforts prior to the convening date of the FY 2019 USMC Lieutenant Colonel PSB, which also failed to select Petitioner for promotion. Accordingly, I believe that the Board’s conclusion that Petitioner exercised reasonable diligence in ensuring the completeness and accuracy of his record prior to the convening date of the PSBs by which he was FOS to be unsupported by the evidence in the record. I further believe that the Board’s findings would set a bad precedent by granting an SSB contrary to the guidance of reference (c).

In addition to the lack of evidence that Petitioner exercised reasonable diligence to ensure the completeness and accuracy of his record prior to convening of the FY 2018 USMC Lieutenant Colonel PSB, I disagree with the Board’s conclusion that the error in Petitioner’s record made a difference in the competitiveness of his record. As the Board noted in Docket No. 2838-19, Petitioner’s recorded PFT score of 208 was rated a “first class” for his age group. This is the same rating he would have received with a score of 237. Accordingly, I believe that the Board was correct in concluding in Docket No. 2838-19 that Petitioner’s erroneous PFT score had no appreciable impact on the competitiveness of his record. Docket No. 2838-19 concluded that other factors in Petitioner’s record carried more weight and likely contributed to his failures to be selected for promotion to lieutenant colonel. This conclusion was supported by the information in Petitioner’s MBS, as well as Petitioner’s FOS by the FY 2020 USMC Lieutenant Colonel PSB, and Petitioner has provided no evidence or argument to rebut this conclusion. Based upon this evidence, I believe that Petitioner has failed to establish by the preponderance of the evidence that he was deprived and impartial consideration by the PSB. He also has failed to establish that a difference of 29 points on one PFT was essential to a substantially accurate, compete, and fair portrayal of the officer’s career. Accordingly, even assuming that erroneous PFT score was presented to the FY 2018 USMC Lieutenant Colonel PSB, I do not believe that an SSB is warranted by the evidence.

EXECUTIVE DIRECTOR RECOMMENDATION:

In view of the above, I recommend that no corrective action be taken on 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 titled matter.

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

5/24/2021

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Executive Director

ACTING ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) DECISION:

Board Recommendation Approved (Convene FY 2018 USMC Lieutenant Colonel SSB)

Executive Director Recommendation Approved (Deny Relief)

JUN 22 2021

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Acting