



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

[REDACTED]
Docket No. 8336-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] XXX XX [REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/attachments
(2) CMC ltr 1610 MMRP-13/PERB, 25 Jul 22
(3) HQMC memo 1610 MMRP-50, 31 Oct 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to remove his failures of selection (FOSs).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 17 January 2023 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, relevant portions of Petitioner's 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 available under existing law and regulations within the Department of the Navy.

b. On 21 January 2022, Petitioner submitted an application to the Marine Corps Performance Evaluation Review Board (PERB) requesting to modify his fitness report for the reporting period 1 June 2020 to 16 June 2021 by removing the reviewing officer (RO) portion of the fitness report. On 25 July 2022, the PERB approved the correction to Petitioner's record. Enclosure (2).

c. In a memorandum dated 31 October 2022, Headquarters Marine Corps (MMRP-50) provided an advisory opinion (AO) for the Board's consideration, recommending that Petitioner's FOSs be removed. In this regard, the AO determined that the changes made to Petitioner's fitness report met the threshold for a positive correction significant enough to have altered any promotion board's decision. The AO explained that the changes to the report removed the appearance of a decrease in performance as assessed by the reviewing officer (RO); the preceding report from the same RO had a higher comparative assessment marking than the contested report; and the lower comparative assessment marking, paired with unfavorable section K comments which the FY 2023 major promotion selection board considered was most likely a significant factor that resulting in him not receiving the required number of votes for selection to major. The AO also noted that a review of Petitioner's official record reflected that the corrected report was added after the FY 2024 promotion board convened, therefore the FY 2024 FOS should also be removed. Enclosure (3).

d. In his application, Petitioner explained that the PERB approved a correction to his record by modifying his fitness report for the reporting period 1 June 2020 to 16 June 2021 by removing the RO portion of the report. Petitioner contended that there was a conflict of interest with the RO evaluating his performance, because the RO was the subject of a Command Investigation. Petitioner was a witness to the investigation and provided a written statement that mentioned the RO, and when the investigation concluded, the results and his statements were made available to the RO. Petitioner also contended that the Marine Corps Performance Evaluation System Manual provides that the comparative assessment mark should be consistent with the RO's profile on a Marine being assessed in back-to-back reporting periods, when the Marine's performance has remained constant. Enclosure (1).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting corrective action.

The Board substantially concurred with the AO. In this regard, the Board noted that Petitioner's RO comparative assessment decreased from block 5 to block 3 on the contested fitness report, while the reporting senior's (RS's) evaluation of his performance remained consistent with the previous reporting period. The Board also noted that the RO comments, though not adverse, were less than favorable and could be perceived as an indication that Petitioner performance declined from previous reporting periods evaluated by the same RS and RO. The Board concurred with the AO's recommendation that Petitioner's FY 2023 and FY 2024 FOSs should be removed.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by removing his failures of selection incurred during the FY 2023 and FY 2024 Marine Corps Major Promotion Section Boards.

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.

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.

1/30/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]