



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

BJG
Docket No: 8224-98
4 June 1999

CAPT [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Captain [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 June 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 20 November 1998, the undated advisory opinion from the HQMC Promotion Branch (MMPR-1), and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 18 December 1998, copies of which are attached. They also considered your rebuttal letters dated 7 December 1998 and 28 May 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board substantially concurred with the comments contained in the report of the PERB in finding that no correction of your fitness report record was warranted.

Specifically regarding your contested fitness report for 25 January to 31 July 1997, the Board was unable to find that your reporting senior's observation was infrequent, noting that item 18 is marked to show that he had "daily" observation, and further noting that observation need not be direct. They likewise were unable to find that your reporting senior did not counsel you about your performance before you received your fitness report at issue. They could not find that your reviewing officer erred by stating that your reporting senior provided you

"close guidance and supervision." In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. They were not persuaded that you necessarily should have been rated ahead of your peers whose performance left something to be desired. They were unable to find that the narrative of your contested report omitted any accomplishments so significant that they should have been mentioned specifically. Finally, they were unable to find that your reviewing officer lacked adequate observation of your performance to do his job properly, noting that he indicated he had "sufficient" opportunity to observe, and again noting that observation need not be direct.

Concerning the contested reviewing officer comments on your fitness report for 1 August to 16 December 1997, the Board found you are correct that these comments impeach the validity of your reporting senior's appraisal of your performance; and they concluded that instead of commenting to the effect that your reporting senior had improperly ranked two different captains number two in your peer group, he should have taken action to correct this error. However, this did not persuade them that the content of the reviewing officer's comments was erroneous or unjust, such that their removal could be supported.

The Board agreed with the advisory opinion from MMOA-4, except they noted that paragraph 4c understates the number of fitness reports in your Military Occupational Specialty the Fiscal Year (FY) 1999 Major Selection Board would have had, without your contested fitness report for 25 January to 31 July 1997. Because they found no defect in your performance record, and they concurred with the MMOA-4 opinion concerning the issue of your missing commendatory material before the FY 1999 promotion board, they found that your failures by the FY 1999 and 2000 Major Selection Boards should stand. Since they found insufficient basis to remove your failures of selection for promotion, they had no grounds to recommend granting you a special selection board, or setting aside action to effect your involuntary discharge from the Regular Marine Corps.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

3-224-98

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

8224-98

IN REPLY REFER TO:
1610
MMER/PERB
NOV 20 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMC

Ref: (a) Captain [REDACTED] DD Form 149 of 26 Aug 98
(b) MCO P1610.7D w/Ch 1-2
(c) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 13 November 1998 to consider Captain [REDACTED] petition contained in reference (a). Action as indicated was requested on the following fitness reports:

a. Report A - 970125 to 970731 (AN) -- Removal in its entirety. Reference (b) applies

b. Report B - 970801 to 971216 (CD) -- Removal of the Reviewing Officer's comments. Reference (c) applies

2. The petitioner contends that Report A is substantially inaccurate, erroneous, and unjust due to bias and prejudice on the part of his Reporting Senior/Battalion Commander (Lieutenant Colonel [REDACTED]). This, he believes is evidenced by the mark of "excellent" in Item 14g (judgment), the "marginal" comment in the Section C narrative, and his ranking as "six of six" in the Reporting Senior's Certification. Along with the allegation of bias, the petitioner states that he was never counseled by Lieutenant Colonel [REDACTED], never set any goals for him, did not share any "performance expectations", and failed to provide supervision and guidance. Concerning the petitioner's challenge to the Reviewing Officer's remarks appended to Report B, it is his position that Colonel [REDACTED] did not have sufficient opportunity to observe his performance and had virtually no contact with him during the three weeks Colonel [REDACTED] functioned as his Reviewing Officer. To support his appeal, the petitioner furnishes his own statement, advocacy letters from Majors [REDACTED] and [REDACTED], a copy of a Formal Safety Investigation Report, accomplishments during the period covered by Report A, and other documentation which he believes will support his arguments.

3. In its proceedings, the PERB concluded that the reports are both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

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a. Notwithstanding the documentation furnished with reference (a), the Board is simply not convinced or otherwise persuaded that Report A is anything other than a fair and objective evaluation of the petitioner's demonstrated performance/capabilities during that finite period. The letters from Major [REDACTED] and [REDACTED], while supportive, are from two officers who were not observing the petitioner from the perspective of a Reporting Senior. Furthermore, they did not have the responsibilities that Lieutenant Colonel [REDACTED] did, as the petitioner's Reporting Senior and Commanding Officer.

b. Major [REDACTED]'s recollections (enclosure (4) to reference (a)) of Lieutenant Colonel [REDACTED]'s initial impressions regarding the petitioner's personal appearance does not substantiate any preconceived prejudice. Certainly marks of "outstanding" in Items 14b (personal appearance) and 14c (military presence) belie any prejudice in those areas.

c. The petitioner's disclaimer to guidance/supervision and his allegation that Lieutenant Colonel [REDACTED] had only "infrequent" observation of his performance are both unsubstantiated. By the very inherent nature of the relationship between a Battalion Commander and Company Commander, significantly more than "infrequent" observation would occur.

d. That a fellow Company Commander, who was rated higher in Item 15b on Report A, was relieved for cause some three months subsequent to submission of the report is not germane to the petitioner's evaluation. Nothing included with reference (a) substantiates that the Reporting Senior could have anticipated such a subsequent action. Captain [REDACTED], another Company Commander whose misfortune it was being wounded on a grenade range, has absolutely no bearing on Report A. The bottom line here is that the petitioner does not substantiate that Report A is inaccurate, unjust, or biased.

e. Report B was a resubmission, so stated in the narrative comments. The evaluation is totally "outstanding" and the petitioner voices no complaint whatsoever about Lieutenant Colonel [REDACTED]'s assessment. Curiously, the supposed prejudice that existed in Report A has now disappeared.

f. The Reviewing Officer for Report B clearly indicated for the period in question that he did not have sufficient opportunity to observe the petitioner. This in no way contradicts his previously stated position on the degree of observation for

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Report A. Since each report is for a finite period, observation circumstances may understandably change. Colonel [REDACTED] comments on Report B are administrative in explaining the late submission of the report and how the Reporting Senior may have erred in rating two Captains as "two of six." None of that invalidates his comments.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A should remain a part of Captain [REDACTED] official military record, and that Report B should remain as configured.

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
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IN REPLY REFER TO:
1412/1
MMPR-1

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF CAPTAIN [REDACTED]
[REDACTED] USMC

Ref: (a) Capt [REDACTED] ltr of 26 Aug 98
(b) SECNAVINST 1401.1B

1. Captain [REDACTED] application for Correction of Naval Records as contained in reference (a) requested a Special Selection Board and removal of passover.
2. Per reference (b) Capta [REDACTED] would only rate a Special Selection Board if prejudicial error occurred, which would adversely affect his opportunity for a fair chance to compete for promotion to the next higher grade.
3. Because the Performance Evaluation Board (PERB) has declined to remove the fitness report in question, there is no prejudicial error and therefore no basis for a Special Selection Board or deletion of passover.
4. The final processing of Captain [REDACTED] request for a Special Selection Board will be based on action taken by the Board for Correction of Naval Records.

[REDACTED]

Assistant Head, Promotion Branch
By direction of
the Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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IN REPLY REFER TO:
1600
MMA-4
18 Dec 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of Captain [REDACTED] USMC of 11 Dec 98

1. Recommend disapproval of Captain [REDACTED]'s request for removal of his failure of selection and his request for a Special Selection Board (SSB).

2. Per the reference, we reviewed Capt [REDACTED] record and his petition. He failed selection on the FY99 USMC Major Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the fitness report for the period 970125-970731 and for removal of the Reviewing Officer's comments from the report for the period 970801-971218. He believes that the presence of the reports and the absence of certain commendatory material previously in the Official Military Personnel File (OMPF) prevented his record from receiving a substantially complete and fair evaluation by the Board. We note, the report for 970801-971218 was not available for the Board's consideration and do not consider it relevant to Captain [REDACTED]'s failure of selection. He requests removal of his failure of selection and a SSB.

3. In our opinion, the fitness report and the absent correspondence present some jeopardy to the record.

a. The fitness report for the period of 970125 to 970731.

This report clearly contains serious jeopardy to the competitiveness of the record. It documents his performance in a significant billet for his rank and Military Occupational Specialty (MOS). He receives a less competitive Section B mark in Judgement and is ranked below all other officers evaluated on that report. Furthermore, his performance is ranked below the other officers even though he is senior in grade and billet to all but one of them.

b. Correspondence not contained in the OMPF.

We believe the absence of correspondence previously contained in the OMPF

Subj: BCNR PETITION FOR CAPTAIN [REDACTED] USMC

presents little jeopardy to the competitiveness of the record. The MBS contained entries for all the correspondence, providing the Board with evidence of his decorations and military education.

4. However, we note the following areas that may have contributed to his failure of selection, even with a favorable decision by the PERB:

a. **Section B marks.** Captain [REDACTED] record contains trends of less competitive markings in Administrative Duties and Handling Enlisted Personnel.

b. **Value and Distribution.** Captain [REDACTED] overall Value and Distribution, having 13 officers ranked above him and 11 below, appears less competitive than his peers. Furthermore, as a captain he has 10 officers ranked above him and 4 below, indicating an even less competitive position relative to his peers.

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c. **MOS credibility.** We believe Captain [REDACTED] record would appear less competitive without the petitioned report because it omits his performance in a critical billet for his rank and MOS. The Board would be left with only two reports, documenting his performance as a lieutenant in a platoon commanders billet, to compare with his peers. We believe this would provide serious jeopardy to the competitiveness of the record.

5. In summary, the fitness report and the absent correspondence present some jeopardy to the record. However, we believe that even with favorable PERB action there is sufficient jeopardy in the record to contribute to Captain [REDACTED] failure of selection. Therefore, we recommend disapproval of Captain [REDACTED] request for removal of his failure of selection and his request for a SSB.

[REDACTED]

Major, U. S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division