



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 1105-99
6 May 1999

1STLT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]

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

Your request to backdate the date of rank and effective date of your promotion to captain to reflect selection by the Fiscal Year (FY) 1999 Captain Selection Board was not considered, since it is premature, as you have been selected, but not yet promoted. Your request for a special selection board was not considered, as you have been selected by the FY 2000 Captain Selection Board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 May 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 9 February 1999, and the advisory opinion from the HQMC Officer Evaluation and Counseling Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 15 March 1999, copies of which are attached. They also considered your rebuttal letter dated 29 March 1999 with enclosures.

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. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that your contested fitness report should stand. Since they found no defect in your performance record, they had no basis to remove your failure by the FY 1999 Captain Selection Board. 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.

As per your request, we are returning the original documents you submitted with your application.

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. 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

IN REPLY REFER TO:
1610
MMER/PERB
FEB 9 1999

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 FIRST
LIEUTENANT [REDACTED], [REDACTED] USMC

Ref: (a) 1stLt [REDACTED] DD Form 149 of 14 Jul 98
(b) MCO P1610.7D

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 4 February 1999 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 950319 to 950915 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that he had no opportunity to append a rebuttal to the report, thereby causing "competitive jeopardy." To support this allegation, the petitioner provides his own statement wherein he references a telephone conversation with the Reporting Senior, and a statement from the Adjutant (First Lieutenant [REDACTED])

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

a. Notwithstanding the statements of both the petitioner and First Lieutenant [REDACTED], there is no showing that the petitioner was not afforded an opportunity to append an official rebuttal to the fitness report. When the petitioner acknowledged the adverse nature of the report via his signature in Item 24, he clearly marked the box indicating he had no statement to make. That decision was his and his alone, and he must accept responsibility for that choice.

b. The petitioner claims that since he did not sight the Reviewing Officer's comments he was also somehow dealt an injustice. The Board finds that to be seemingly ironic given the fact that [REDACTED] comments are laudatory and mitigating regarding the DUI.

c. All of the advocacy letters furnished with reference (a) are complimentary concerning the petitioner's current performance. They do not, however, negate the events and

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circumstances documented in the challenged fitness report. In this regard, the Board stresses that the DUI is an uncontroverted matter of fact and not only documented in the fitness report, but also in the "C" portion of his Official Military Personnel File.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First Lieutenant [REDACTED] official military record.

5. The case is forwarded for final action.



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

1105-99



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

IN REFERENCE TO:
1610
MMOA-4
15 Mar 99

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

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]
[REDACTED] USMCR

Ref: (a) MMER Request for Advisory Opinion in the case of First
Lieutenant [REDACTED] USMCR
of 12 Mar 99

1. Recommend disapproval of First Lieutenant [REDACTED] request for
removal of his failure of selection.

2. Per the reference, we reviewed First Lieutenant [REDACTED] record
and petition. He failed selection on the FY99 USMC Captain
Selection Board. Subsequently, he unsuccessfully petitioned the
Performance Evaluation Review Board (PERB) to remove the Transfer
fitness report of 950319-950915 from the record. First
Lieutenant [REDACTED] requests removal of his failure of selection.

3. In our opinion, the petitioned report does present obvious
significant jeopardy to the record due to the adverse nature of
the report. Additionally, First Lieutenant [REDACTED] record
contains the following areas of serious competitive concern that
may have contributed to his failure of selection.

a. **Professional Military Education (PME).** First Lieutenant
[REDACTED] not completed the requisite PME for his grade per MCO
P1553.4.

b. **Value & Distribution.** First Lieutenant [REDACTED] overall
Value & Distribution appears less competitive than his peers with
five officers ranked above him and two below.

4. In summary, the petitioned report does present obvious
significant jeopardy to the record. However, the lack of PME and
Value & Distribution also present serious competitive concern to
the record. Therefore, we recommend disapproval of First
Lieutenant [REDACTED] request for removal of his failure of
selection.

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]
[REDACTED] USMCR

5. Point of contact is Major [REDACTED]

[REDACTED]

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