



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

BJG
Docket No: 2227-99
12 August 1999

1STLT [REDACTED] USMCR
[REDACTED]

Dear Lieutenant [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 11 August 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), dated 1 April 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 18 May 1999, copies of which are attached.

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.

Regarding your contested fitness report for 2 May to 30 June 1996, the Board found that the reference to an inspection before the reporting period, to show improvement during the period, was not objectionable. They were unable to find that your report should not reflect that it was based on "daily" observation, noting that observation need not be direct.

Concerning your contested adverse fitness report for 1 July to 31 December 1996, the Board was unable to find that it should not show it was based on "daily" observation, nor could they find that your reviewing officer (RO) should not have indicated that he had sufficient opportunity to observe your performance, again noting that observation need not be direct.

Regarding your contested adverse fitness report for 1 January to 31 July 1997, the Board noted that your RO's remarks of 1 July 1998 acknowledged the "mission capable" results achieved on two inspections.

Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year (FY) 1998 and 1999 Captain Selection Boards or the FY 2000 Reserve Captain Selection Board, or set aside your involuntary discharge from the Regular Marine Corps on 1 September 1998.

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. 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

2227-94

IN REPLY REFER TO:
1610
MMER/PERB
APR 1 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] USMC

Ref: (a) 1stLt. [REDACTED] DD Form 149 of 2 Dec 97
(b) MCO P1610.7D w/Ch 1
(c) MCO P1610.7D w/Ch 1-2

Encl: (1) Completed Fitness Report 970101 to 970731 (CH)

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 19 February 1998 to consider First Lieutenant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 960502 to 960630 (SA) -- Reference (b) applies
- b. Report B - 960701 to 961231 (SA) -- Reference (b) applies
- c. Report C - 970101 to 970731 (CH) -- Reference (c) applies

2. The petitioner takes exception with several of the statements contained in Report A and believes they are inaccurate. It is his position that the initial SMAT inspection was merely an "assist visit" that did not occur during the period covered. He also states that the entire battalion, with the exception of the armory, failed the inspection. He disclaims very little "command supervision" and questions the mark of "daily" in Item 18 when the Reporting Senior only saw him once or twice a week. Concerning Report B, the petitioner again takes exception with several of the comments and states that he did not contest the report at the time it was written because of his belief that the Reviewing Officer would then make it worse. With regard to Report C, the petitioner offers his explanation of the events and circumstances during the reporting period and believes that the evaluation, as well as the other two challenged appraisals, fail to reflect his true performance and contributions.

3. In its proceedings, the PERB concluded that:

- a. Reports A and B are administratively correct and procedurally complete as written and filed. While reference (a) is replete with the petitioner's arguments that the reports are

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neither fair nor accurate assessments of his performance/
contributions, it is short on any documentation that would prove
to the contrary. Succinctly stated, the petitioner has failed to
meet the burden of proof necessary to establish the existence of
either an error or injustice.

b. With specific regard to Report B, the Board observes that
when the petitioner acknowledged the adverse nature of the report
(evidence his signature in Item 24), he made a conscious and
knowing decision to omit a statement in his own behalf. In so
doing, he passively concurred in the evaluation and indicated he
had no matters to present in extenuation and mitigation. For
whatever reason he chose that course of action, it is he who must
accept the ultimate responsibility.

c. The overall tenor of Report C is such that the petitioner
should have been afforded an opportunity to acknowledge and
respond. Owing to the relative recency of the report at the time
the PERB first considered reference (a) (seven months), the Board
found that referral at that time would be appropriate. All such
action has been completed and the petitioner has appended a
statement in rebuttal. Both the Reviewing Officer and Adverse
Sighting Officer have dispelled any perception of inaccuracy
or unfairness and placed the entire situation in its proper
perspective. Again, the Board discerns absolutely no error or
injustice.

4. The Board's opinion, based on deliberation and secret ballot
vote, is that the contested fitness reports should remain a part
of First Lieutenant [REDACTED]'s official military record. The
document provided at the enclosure is the version of Report C
which now appears in the petitioner's official record.

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
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1600
MMA-4
18 May 99

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

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

Ref: (a) MMER Request for Advisory Opinion in the case of
First Lieutenant [REDACTED] USMC
of 14 May 99

1. Recommend disapproval of First Lieutenant [REDACTED]'s request for
a Special Selection Board and removal of his failures of
selection.

2. Per the reference, we reviewed First Lieutenant [REDACTED]
record and his petition. He failed selection on the FY98 and FY99
USMC Captain Selection Boards. Subsequently, he petitioned for
removal of the fitness reports for the periods of 960502 to
960630, 960701 to 961231, and 970101 to 970731 from his record.
The Performance Evaluation Review Board (PERB) reviewed the
petition and denied the request. First Lieutenant [REDACTED] requests
a Special Selection Board and to have his failures of selection
removed.

3. In our opinion, the petitioned reports *represented serious
competitive jeopardy* to the record as it appeared before the FY98
and FY99 Boards.

a. **Fitness Report for the period 960502 to 960630.** The
report contains less competitive Section B marks in Regular
Duties, Administrative Duties, Personal Relations, Economy of
Management, and General Value to the Service. The Section C
comments indicate his actions are substandard, predominately
reactive vice proactive in nature. He is ranked below three
officers and with two in General Value to the Service. This
report would present serious jeopardy to the record.

b. **Fitness Report for the period 960701 to 961231.** This
report is adverse in nature and presents extreme jeopardy to the
record. It contains less competitive marks in all categories. We
believe even the 'Not Observed' marks in Handling Officers and
Tactical Handling of Troops could be considered to have a negative
connotation since one would expect some observed performance in
these areas due to his billet. Furthermore, the Reporting
Senior's and Reviewing Officer's comments clearly indicate his

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED] USMC

performance is below the standard expected of an officer of his rank and experience. Finally, the Reporting Senior indicates he would "Be Willing" to serve with First Lieutenant [REDACTED] in combat. This report is sufficient by itself to result in a failure of selection. We note this report did not appear before the FY98 Board.

c. The Fitness Report for the period of 970101-970731.

(1) This report is adverse in nature and presents extreme jeopardy to the record. It contains less competitive marks in Regular Duties, Administrative Duties, Handling Officers, Military Presence, Attention to Duty, Initiative, Judgement, Force, Leadership, Personal Relations, Economy of Management, Growth Potential, and General Value to the Service. Both the Reporting Senior's and Review Officer's comments indicate his performance is substandard for an officer of his rank and experience. Furthermore, the Reporting Senior indicates he would "Be Glad" to serve with First Lieutenant [REDACTED] in combat.

(2) This report could indicate a performance decline from the fitness report for the period 960502 to 960630. The Reporting Senior assigns lower Section B marks in Handling Officers, Military Presence, Attention to Duty, Initiative, Judgement, Force, Leadership, and Growth Potential than on the previous report. He lowers his preference to serve with in combat from "Particularly Desire" to "Be Glad."

(3) This report also did not appear before the FY98 Board. This report would have been sufficient by itself to result in a failure of selection.

4. Albeit, we believe that First Lieutenant [REDACTED] would have failed selection *even had all the petitioned items been removed from the record.* We note the following areas of competitive concern:

a. Failure to complete the requisite Professional Military Education (PME). First Lieutenant [REDACTED] failed to complete the requisite PME for his grade per MCO P1553.4 prior to both Boards.

b. Failure to submit a promotion photograph for the FY98 Board. There is no indication that the Board received a photograph or any correspondence from First Lieutenant [REDACTED]

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

c. **Less competitive Section B marks.** First Lieutenant [REDACTED] record contains less competitive marks in Administrative Duties, Initiative, Judgement, Personal Relations, and Economy of Management.

d. **Value and Distribution.** First Lieutenant [REDACTED] overall Value and Distribution marks are less competitive with seven officers ranked above him and four below for the FY98 Board. His Value and Distribution was even less competitive for the FY99 Board with eight officers ranked above and four below.

e. **Written comments by Reporting Seniors and Reviewing Officers.** Written comments by various reporting officials indicate that First Lieutenant [REDACTED] performance was below a standard expected of an officer of his grade and experience.

5. In summary, the petitioned reports, either individually, in combination, or in total, present serious jeopardy to the record. However, *even had the petitioned reports been removed from the record* there are significant competitive concerns sufficient to result in First Lieutenant [REDACTED] failures of selections. Therefore, we recommend disapproval of First Lieutenant [REDACTED] request for an Special Selection Board and removal of his failures of selection.

6. POC for this office is Major [REDACTED] or commercial (700) [REDACTED] or 800 [REDACTED]



Lieutenant Colonel, U. S. Marine Corps
Head, Officer Career Counseling and
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