



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

BJG  
Docket No: 2098-00  
11 September 2000

MAJ [REDACTED] USMC

SP4 [REDACTED]

Dear [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.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of the fitness reports for 1 November 1992 to 30 June 1993 and 1 July to 31 October 1993.

In paragraph 15 of your letter dated 9 March 2000 with six enclosures, you requested a copy of the 2 February 2000 letter from the Headquarters Marine Corps (HQMC) Performance Evaluation Review Branch (MMER) requesting comments from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4). This letter is not in the record of your case. You may request a copy from MMER.

Your request to enter a "CD" (change of duty) fitness report for 9 March to 10 April 1991, reflecting service in combat with the primary duty of adjutant, could not be considered, as you did not provide such a report. If you obtain such a report, it may be submitted to HQMC for file in your record. However, paragraph 4.c of your letter of 3 August 2000 says "it probably would be best to just have this 33 day report removed." It would appear to serve your purpose better not to enter this report at all, rather than enter it only to have it removed.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 August 2000. 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 reports of the HQMC Performance Evaluation Review Board (PERB), dated 16 December 1999 and 17 March 2000 with enclosure, and the advisory opinions from

MMER, dated 6 June 2000, and MMOA-4, dated 3 February, 13 March, and 15 June 2000, copies of which are attached. They also considered your letters dated 11 January, 9 March with six enclosures, 9 March with three enclosures, and 3 August 2000.

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 found that even if you were correct that the fitness report for 9 March to 31 October 1991 should have begun on 11 April 1991 and should not have been marked as a combat report, these would not be material changes warranting corrective action without amendment of your standing as fourth of five captains.

The Board considered, but rejected your request to restore the fitness reports for 1 November 1992 to 30 June 1993 and 1 July to 31 October 1993 removed by CMC, and amend them to show that you were ranked first among your peers. As the reporting seniors involved effectively admitted to having manipulated the performance evaluation system, the Board was unwilling to accept their assertions as to how you should have been ranked.

The Board found that your failures by the Fiscal Year 2000 and 2001 Lieutenant Colonel Selection Boards should stand. Without a "CD" report for 9 March to 10 April 1991, they could not determine if such a report would have helped you for promotion. They found that your selection would have been definitely unlikely, even if the report for 9 March to 31 October 1991 had been amended as you request and the reports removed by CMC had not been considered. In this regard, they particularly noted the areas of competitive concern cited in paragraph 3 of the MMOA-4 advisory opinion dated 13 March 2000; and they found that the requested changes to the report for 9 March to 31 October 1991, without any change to your low peer ranking, would not have appreciably improved your competitiveness.

In view of the above, your application for relief beyond that effected by CMC 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

2094-00

IN REPLY REFER TO:  
1610  
MMER/PERB  
DEC 16 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 MAJOR  
[REDACTED] USMC

Ref: (a) [REDACTED] DD Form 149 of 12 Oct 99  
(b) MCO P1610.7C w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 December 1999 to consider [REDACTED]'s petition contained in reference (a). The petitioner requested that his fitness report for the period 910309 to 911031 (AN) be changed from a "combat" designated evaluation to "non-combat." Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that after retrograding from Kuwait to Saudi Arabia at the conclusion of Desert Storm, he became the 3d Assault Amphibian Battalion Adjutant on 9 March 1991; command of his company was assumed on 11 April 1991, after his return to Camp Pendleton. He opines that the only rationale he can surmise as to why the Reporting Senior identified it as a combat report is that they were trying to include the one month served as the Adjutant. To support his appeal, the petitioner furnishes a copy of a letter from Lieutenant Colonel [REDACTED] and a copy of an extract from his Officer Qualification Record (OQR).

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. As required by subparagraph 4002.3c of reference (b), Lieutenant [REDACTED] indicated in Item 3c (type duty), and again in the narrative comments, that the report was under combat conditions. That he may now opine that he mistakenly entered the letter code "C" in Item 3c is in no way an invalidating factor in the report's authenticity. Reference (b) did not contain a very clear definition of what exactly constituted a "true" combat report or what was to be specifically addressed in Section C. Thus, the Reporting Senior's actions in filling out Item 3c and Section C as he did were well within the spirit and intent of reference (b).

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

b. Additionally, the designation as a combat report in this case was not invalid, since subparagraph 4007.4b(1) of reference (b) also defined a report as a combat type if the Marine reported on was receiving hostile fire pay. Until such time as the petitioner's unit departed Southwest Asia (SWA), he was drawing hostile fire pay since the first month covered by the challenged report was in SWA.

c. Nothing in Lieutenant Colonel [REDACTED] letter conveys anything that would repudiate or diminish his intended evaluation. That he and the petitioner may have been led to believe the report was in error and caused the petitioner to fail selection is viewed as unsanctioned and unsupported speculation.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report 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

2098-0



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

IN REPLY REFER TO:  
1610  
MMER  
17 Mar 00

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

Subj: BCNR APPLICATION IN THE CASE OF MAJOR [REDACTED]  
[REDACTED] JSMC

- Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 2 Mar 00
- (2) CMC Advisory Opinion 1610 MMOA-4 of 13 Mar 00
- (3) Copy of CMC ltr 1610 MMER of 17 Mar 00

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED] official military record, the fitness reports for the periods 921101 to 930630 (CH) and 930701 to 931031 (AN).

2. We defer to BCNR on the issue of [REDACTED] request for the removal of his failure of selection to the grade of Lieutenant Colonel. Enclosure (2) is furnished to assist in resolving that matter.

3. By enclosure (3), this Headquarters provide [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]  
[REDACTED]  
[REDACTED] N  
Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
By direction of the Commandant  
of the Marine Corps

209800



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

IN REPLY REFER TO:  
1610  
MMER/PERB  
2 MAR 2000

From: Commandant of the Marine Corps  
To: [REDACTED] USMC

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
15 Jul 93	[REDACTED]	921101 - 930630 (CH)
7 Dec 93	[REDACTED]	930701 - 931031 (AN)

2. There will be inserted in your Naval record a memorandum in place of the removed reports. The memorandum will contain appropriate identifying data concerning the reports and state that they have been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the reports or the events which may have precipitated them, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED]

By direction



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

2008-10

IN REPLY REFER TO:  
1610  
MMER  
6 Jun 00

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

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]  
[REDACTED] USMC

Ref: (a) Your request of 19 Apr 00  
(b) PERB Advisory Opinion 1610 MMER/PERB of 16 Dec 99

1. In reference (a) you asked PERB to address [REDACTED] request to change his fitness report for the period 910309 to 911031 (AN) from a "combat" to "non-combat" report and to change the beginning date to read "910411." Additionally, [REDACTED] has asked that a new "change of duty" (CD) fitness report be prepared depicting his service as an Adjutant for the period ~~901101~~ to 910410.

20 910309

2. The PERB has already furnished it's opinion concerning the "combat" nature of the fitness report identified above. That analysis is contained in reference (b) and remains valid.

3. A review of the chronological listing of [REDACTED] fitness reports reveal that all are in complete order and that changing the beginning date would cause an overlapping period. Regardless, the less than 30-day period from 910411 to 910309 does not warrant the requested modification. Finally, as a remedial Board, the PERB does not seek or direct the submission of fitness reports. If, however, [REDACTED] should obtain a fitness report for the period ~~901101~~ to 910410, signed by the appropriate Reporting and Reviewing Officers, the Board would entertain a request to add the report as "supplemental material."

20 910309

[REDACTED]

SEN  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
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

2098-00

IN REPLY REFER TO:

1600  
MMA-4  
3 Feb 00

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

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

Ref: (a) MMR Request for Advisory Opinion in the case of  
[REDACTED] USMC  
of 2 Feb 00

1. Recommend disapproval of [REDACTED] request for removal of his failures of selection even had the Performance Evaluation Review Board (PERB) modified the petitioned report.

2. Per the reference, we reviewed [REDACTED] record and petition. He failed selection on the FY00 and FY01 USMC Lieutenant Colonel Selection Boards. Subsequently, he unsuccessfully petitioned the PERB for modification of the Annual fitness report of 910309 to 911031. [REDACTED] requests removal of his failures of selection.

3. In our opinion, the unfavorable PERB action does not change the record as it appeared before the FY00 and FY01 Boards and his record received a substantially complete and fair evaluation by both Boards. However, [REDACTED] record contains others areas of competitive concern that more than likely led to his failures of selection.

a. **Section B Marks.** [REDACTED] record contains less competitive Section B marks in Regular Duties, Additional Duties, Administrative Duties, Handling Officers, Handling Enlisted, Training Personnel, Tactical Handling of Troops, Personal Appearance, Military Presence, Attention to Duty, Cooperation Judgment, Force, Personal Relations and Economy of Management. We note the marks in Administrative Duties, Handling Enlisted and Economy of Management appear as late as 1993-4.

b. **Professional Military Education.** [REDACTED] did not complete the PME requirement for his grade until after the FY00 Board had adjourned. Therefore, the FY00 Board did not consider him PME complete.

Subj: BCNR PETITION FOR MA [REDACTED]  
[REDACTED] USMC

c. **Value & Distribution in Command.** While serving in Company Command and Inspector & Instructor billets [REDACTED] has eight officers ranked above him and eight below, placing him around mid pack.

4. In summary, even had the PERB modified the petitioned report, [REDACTED]'s record contains other areas of competitive concern that more than likely led to his failures of selection. Therefore, we recommend disapproval of [REDACTED] request for removal of his failures of selection.

5. Point of contact is [REDACTED] Rice,



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

209450



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

IN REPLY REFER TO:

1600  
MMAA-4  
13 Mar 00

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

Subj: BCNR PETITION FOR MAJOR [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of  
[REDACTED] USMC  
of 2 Mar 00

1. Recommend disapproval [REDACTED] implied request for removal of his failures of selection.
2. Per the reference, we reviewed [REDACTED] record and petition. He failed selection on the FY00 and FY01 USMC Lieutenant Colonel Selection Boards. Subsequently, he successfully petitioned the PERB for removal of the Change of Reporting Senior fitness report of 921101 to 930630 and the Annual fitness report of 930701 to 931031. [REDACTED] implies a request for removal of his failures of selection.
3. In our opinion, the favorable PERB action enhances the competitiveness of the record, but not significantly enough to warrant removal of the failures of selection. Moreover, Major [REDACTED] record contains others areas of competitive concern that more than likely led to his failures of selection.
  - a. **Section B Marks.** [REDACTED] record contains less competitive Section B marks in Regular Duties, Additional Duties, Administrative Duties, Handling Officers, Handling Enlisted, Training Personnel, Tactical Handling of Troops, Personal Appearance, Military Presence, Attention to Duty, Cooperation Judgment, Force, Personal Relations and Economy of Management. We note the mark in Handling Enlisted appears as late as 1994.
  - b. **Professional Military Education.** [REDACTED] did not complete the PME requirement for his grade until after the FY00 Board had adjourned. Therefore, the FY00 Board did not consider him PME complete.

Subj: BCNR PETITION FOR MA [REDACTED]  
[REDACTED] 3 USMC

c. **Value & Distribution in Command.** While serving in Company Command and Inspector & Instructor billets, [REDACTED] has five officers ranked above him and eight below, placing him above mid pack. However, if we discount the Transfer fitness reports, he has four above and two below, placing him near the bottom of the pack.

4. In summary, the favorable PERB action enhances the competitiveness of [REDACTED]'s record, but not significantly enough to warrant removal of the failures of selection. Moreover, the record contains other areas of competitive concern that more than likely led to his failures of selection. Therefore, we recommend disapproval of [REDACTED] implied request for removal of his failures of selection.

5. Point of contact [REDACTED]



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



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

2009-00

IN REPLY REFER TO:

1600  
MMA-4  
15 Jun 00

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

Subj: BCNR PETITION FOR MAJOR [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of  
[REDACTED] USMC  
of 7 Jun 00  
(b) MMA-4 Memorandum for the Executive Director, Board for  
Correction of Naval Records of 3 Feb 00

1. Recommend disapproval of [REDACTED] request for removal of  
his failures of selection.

2. Per reference (a), we reviewed [REDACTED]'s record and  
petition. He failed selection on the FY00 and FY01 USMC  
Lieutenant Colonel Selection Boards. He unsuccessfully petitioned  
the PERB for modification of the Annual fitness report of 910309  
to 911031. Subsequently, he requested that a Change of Duty  
fitness report for the period 901101 to 910410 be prepared [REDACTED]  
[REDACTED] requests removal of his failures of selection.

3. MMA-4 has previously provided an opinion concerning Major  
[REDACTED] petition to modify the report of 910309 to 911031. That  
opinion is contained in reference (b) and remains valid.

4. In our opinion, a Change of Duty fitness report for the period  
901101 to 910410 would have minimal impact on the competitiveness  
of the record. His record received a substantially complete and  
fair evaluation by both Boards and his petition is without merit.  
Therefore, we recommend disapproval of [REDACTED] request for  
removal of his failures of selection.

5. Point of contact is [REDACTED] 1.

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