



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

BJG
Docket No: 2797-00
13 June 2000

MAJ [REDACTED] HI USMC
[REDACTED]
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 June 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 report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 17 April 2000, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division, dated 4 May 2000, copies of which are attached. They also considered your rebuttal letter dated 6 June 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 substantially concurred with the comments contained in the report of the PERB.

Regarding your contested fitness report for 7 January to 31 August 1985, the Board noted that the applicable directive, Marine Corps Order P1610.7B, paragraph 2003.2.a, states that "Commanding officers are normally the reporting seniors [(RSs)] for officers within their respective commands." They recognized that your report at issue was submitted on the occasion of a change of your RS, while your battalion commander (BC) who acted as your RS remained in place; that your BC changed from your RS to your reviewing officer for your following report; and that your RS for your other six reports at the battalion was the S-4 officer. However, these facts did not persuade them that your BC was not your proper RS for the period concerned. They were unable to find that your BC acted as your RS because

he disagreed with your report written by the S-4 officer on the occasion of his transfer.

Since the Board found no defects in your performance record, they had no basis to remove your failure by the Fiscal Year 2001 Lieutenant Colonel 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.

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
17 APR 2000

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
[REDACTED] USMC

Ref: (a) Majo [REDACTED] DD Form 149 of 22 Feb 00
(b) MCO P1610.7B w/Ch 1-2 and ALMAR 099/85
(c) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 April 2000 to consider Majo [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 850607 to 850831 (CH) -- Reference (b) applies
- b. Report B - 960410 to 960731 (AN) -- Reference (c) applies

2. The petitioner contends that Report A violates reference (b) relative to minimum observation time for an observed fitness report. Concerning Report B, the petitioner argues that the provisions of the applicable directive--reference (c)-- have not been followed, again with regard to minimum observation time. He also points out two lesser administrative mistakes: an incorrect social security number for the Reporting Senior; and the absence of primary military occupational specialty (PMOS) designations for the officers listed on page two under the "Reporting Senior's Certification." to support his appeal, the petitioner furnishes his own detailed statement, letters from [REDACTED] and [REDACTED] various travel orders, extracts from references (b) and (c), and copies of the reports at issue.

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

- a. With regard to the observation time surrounding both reports, the Board points out that while the references suggest 90 days as the minimum observation required, Reporting Seniors have the prerogative of rendering observed evaluations at their discretion. This is especially true if the reports are based on close and daily personal contact, or when the Reporting Senior believes there has been sufficient opportunity to observe. This

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

was evidently the situation in the case of both challenged reports, and notwithstanding the information/documentation furnished with reference (a), the Board discerns nothing that would establish that either report is somehow unjust.

b. The letters from Colonel [REDACTED] do not establish that Lieutenant Colonel [REDACTED] could not have been the petitioner's rightful Reporting Senior for Report A. In this regard, we point out that when the petitioner signed Item 22 of the report, he attested to the accuracy of the information contained in Section A. This includes, but is definitely not limited to, designation of the Reporting Senior of record. [REDACTED] stated, the petitioner's disclaimer as to Lieutenant Colonel [REDACTED] responsibility as the Reporting Senior of record--almost 15 years after the fact--lacks both merit and substantiation.

c. The petitioner has argued that both reports represent deviations from the remainder of his record. While this may be true, the Board emphasizes that fitness reports from other Reporting Seniors do not constitute valid gauges in determining the fairness or accuracy of other evaluations. Likewise, we find nothing in reference (a) to prove that the petitioner somehow rated more than what has been recorded on either appraisal.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of [REDACTED]'s official military 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
MMAA-4
4 May 00

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

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

Ref: (a) MMER Request for Advisory Opinion in the case of
[REDACTED] USMC
of 28 Apr 00

1. Recommend disapproval of [REDACTED]'s request for removal of his failure of selection.

2. Per the reference, we reviewed [REDACTED]'s record and petition. He failed selection on the FY01 USMC Lieutenant Colonel Selection Board. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Change of Reporting Senior fitness report of 850607 to 850831 and the Annual fitness report of 960410 to 960731. [REDACTED] requests removal of his failure of selection.

3. In our opinion, [REDACTED]'s request does not reflect a material change in his record as it appeared before the FY01 Board. Had the petitioned reports been removed, the competitiveness of the record would not have been significantly improved. His record received a substantially complete and fair evaluation by the Board and his petition is without merit. Therefore, we recommend disapproval of [REDACTED] request for removal of his failure of selection.

4. Point of contact is [REDACTED]
[REDACTED]

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