



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 4990-00

12 September 2000

[REDACTED] SMC

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 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 report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 14 July 2000, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 10 August 2000, 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 probable material error or injustice.

The Board substantially concurred with the comments contained in the report of the PERB in concluding that the contested fitness report should stand.

The Board further found that your failure by the Fiscal Year 2001 Lieutenant Colonel Selection Board should not be removed. With the contested fitness report properly in your record before that promotion board, they found your selection would have been definitely unlikely, even if the errors listed in enclosure (5) to your application had been corrected. They also noted that you could have submitted correspondence to the promotion board forwarding the missing material and legible copies of illegible documents.

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
14 JUL 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 MAJOR
[REDACTED] USMC

Ref: (a) [REDACTED] DD Form 149 of 17 May 00
(b) MCO P1610.7C w/C 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 July 2000 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 921101 to 930506 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report was written with a single incident of dispute being used to characterize the entire reporting period. This, he believes, causes the Section C narrative and the Reporting Senior's Certification to render the appraisal an inaccurate account of his true performance. To support his appeal, the petitioner observes that the immediately preceding fitness report, written by the same Reporting Senior, was both fair and accurate and that at no time during the period at issue was he counseled on a perceived decline in performance. As further evidence of the inaccuracy, the petitioner furnishes a letter from [REDACTED] and, a fellow-Captain during the period.

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 from the petitioner and [REDACTED] the Board is simply not convinced or otherwise persuaded that the report at issue represents anything other than a fair, objective, and accurate evaluation of the petitioner's performance during the stated period. The report is an overall positive account of excellent/outstanding performance with absolutely no noted deficiencies. That the petitioner disclaims counseling on a perceived "decline" in performance is neither substantiated nor documented.

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

b. A Reporting Senior is under no obligation to grade a subsequent report in the same manner as the previous one was graded. Since each report is for a finite period, fluctuations in grades are presumed to be nothing more than a measure of degree in what areas the intensity and application of effort were required.

c. For the petitioner to contend bias because he was not able to push through the approval to construct a grenade range is unsubstantiated. There is nothing to show precisely what priority this project had on the Reporting Senior's agenda or that the interpretation offered by the petitioner and Major [REDACTED] is the same as envisioned by the Reporting Senior. Again, nothing concerning this supposed "impossible task" has been documented (i.e., correspondence to Naval Station Public Works and their reply(ies), NEPA's notice that an environmental study was required, the NEPA/Public Works estimated cost of the study, etc.).

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

5. The case is forwarded for final action.

[REDACTED]
[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
10 Aug 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 7 Aug 00

1. Recommend disapproval [REDACTED] request for removal of his failure of selection.
2. Per the reference, we reviewed [REDACTED] 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 921101 to 930506. [REDACTED] requests removal of his failure of selection based on a perceived unjust fitness report and administrative errors in his Official Military Personnel File.
3. In our opinion, removing the petitioned report would have increased the competitiveness of the record. However, the unfavorable PERB action does not reflect a material change in the record as it appeared before the FY01 Board and his record received a substantially complete and fair evaluation by the board. Therefore, we recommend disapproval of [REDACTED] request for removal of his failure of selection.
4. Point of contact is [REDACTED].

[REDACTED]
Colonel, U.S. Marine Corps
Head, Officer Assignments Branch
Personnel Management Division