



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

BJG
Docket No: 6365-01
5 October 2001

CAP [REDACTED] II USMC
[REDACTED]
[REDACTED]

Dear Captain [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 that the contested reviewing officer comments on your fitness report for 2 June to 31 July 1998 be modified by removing the last sentence, which reads as follows: "- While this officer continues to show growth/promise in both his tactical flying and collateral duty assignments, he generally lags behind peers/contemporaries."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 September 2001. 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 Performance Evaluation Review Board (PERB), dated 10 August 2001, a copy of which is 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. Your supporting documentation, including the letter of 10 April 2001 from a Marine Corps lieutenant colonel (enclosure (6) to your application), did not persuade the Board that the remaining reviewing officer comments at issue were unjustified. 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

Enclosure

6365-01



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

IN REPLY REFER TO:
1610
MMER/PERB
10 AUG 2001

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
CAPTAIN [REDACTED], USMC

Ref: (a) Captain [REDACTED]'s DD Form 149 of 14 May 01
(b) MCO P1610.7D w/Ch 1-4
(c) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 8 August 2001 to consider Captain [REDACTED]'s petition contained in reference (a). Removal of the Reviewing Officer's remarks from the following fitness reports was requested:

- a. Report A - 980505 to 980601 (CD) - Reference (b) applies
- b. Report B - 980602 to 980731 (DC) - Reference (c) applies

2. The petitioner contends the comments provided by the Reviewing Officer (Lieutenant Colonel [REDACTED]) are unjust, inaccurate, and misleading regarding his performance as a pilot and an officer. He states he signed the reports with only Section C comments completed and was never allowed to sight the Reviewing Officer's comments, nor given a copy of the report complete with those remarks. To support his appeal, the petitioner furnished his own detailed statement, copies of the challenged fitness reports, and several items of documentation that he believes will support his position.

3. In its proceedings, and notwithstanding the items included with reference (a), the Board concludes there is nothing to show that Lieutenant Colonel [REDACTED]'s observations are unjust, inaccurate, or erroneous. While the petitioner may believe the Reviewing Officer's comments were not justified, the Board observes this to be a matter of differing opinions between he and Lieutenant Colonel [REDACTED]. Simply stated, the petitioner's disagreement and dissatisfaction do not somehow invalidate Lieutenant Colonel [REDACTED]'s observations.

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

4. The one area with which the PERB takes exception is in Lieutenant Colonel [REDACTED] final statement on Report B. In this regard, the Board observes that the negativity of that statement mandated referral to the petitioner for acknowledgment (signature in Item 24) and an opportunity to append a statement of rebuttal. The Board does not, however, find this to invalidate the entire set of Reviewing Officer's remarks and has, instead, directed elimination of that single sentence (to wit: "-While this officer continues to show growth/promise in both his tactical flying and collateral duty assignments, he generally lags behind peers/contemporaries.").

5. The Board's opinion, based on deliberation and secret ballot vote, is that the Reviewing Officer's comments on Report A and the modified Reviewing Officer's comments on Report B should remain a part of Captain [REDACTED] official military record.

6. The case is forwarded for final action.

[REDACTED SIGNATURE]

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