



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

BJG
Docket No: 6693-01
15 October 2001

MA [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Major [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 12 October 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 (HQMC) Performance Evaluation Review Board (PERB), dated 21 August 2001, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division, dated 30 August 2001, copies of which are attached. They also considered your rebuttal letter dated 3 October 2001.

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. In this connection, the Board substantially concurred with the report of the PERB.

The Board did not find the contested fitness report for 30 September 1989 to 24 February 1990 to be ambiguous or in violation of the prohibition against damning with "faint praise." Concerning the contested fitness report for 1 August to 15 December 1997, they did not condone its late submission, but did not find that this invalidated the report. They were unable to find that the reporting senior ever assured you that the marks in this report would be unchanged from the report he had submitted on you for the immediately preceding period. They were likewise not persuaded that this report was prepared in haste without due regard for the applicable references. Since the Board found no defect in your performance record, they had no basis to strike your failures by the Fiscal Year 2001 and 2002 Lieutenant Colonel Selection Boards. 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

6093-01

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

Ref: (a) Major [REDACTED] DD Form 149 of 13 Jun 01
(b) MCO P1610.7C w/Ch 1-4
(c) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 15 August 2001 to consider Major [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 890930 to 900224 (TD) - Reference (b) applies
- b. Report B - 970801 to 971215 (TR) - Reference (c) applies

2. The petitioner contends that Report A constitutes an unjust evaluation of his performance, and that its presence in his official military personnel file contributed materially to his failure of selection to the grade of Lieutenant Colonel. It is the petitioner's belief that the Section C narrative "damns with faint praise" and fails to provide anything in the form of accurate or meaningful information. He further opines Lieutenant Colonel [REDACTED] was the "principal author" of the report, and that he signed Item 22 in the presence of that officer (without being shown any markings in Section B or comments in Section C). Above all, the petitioner believes the report is ambiguous at best, and adverse at worst. Concerning Report B, the petitioner believes the accuracy of that evaluation was "undermined" by a series of events and circumstances over which he had no control. It is his belief that the cumulative effect of noncompliance with reference (c) and a delay between the end of the reporting period and completion of the report ultimately affected the reliability of the entire report. To support his appeal, the petitioner furnishes his own detailed statement, copies of the challenged reports, a copy of counseling notes from the Career Counseling Section, a copy of the Annual Command History for the USS PONCE (9 Feb 98), and a copy of an award recommendation.

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

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. At the outset, the board observes that Colonel [REDACTED] was the proper Reporting Senior for Report A (so acknowledged when the petitioner signed Item 22 of the report). His belief that Lieutenant Colonel [REDACTED] was the "principal author" of the Section B marks and Section C comments has absolutely no grounding in fact. In this regard, we emphasize that per the provisions of subparagraph 2003.3g of reference (b), commanders are normally the Reporting Seniors for primary staff officers.

b. In isolating certain words in Section C of Report A, the petitioner somehow infers the Reporting Senior's use of such comments conspires to render his performance noncompetitive. We note that Report A is the petitioner's first full evaluation as an S-2 officer after moving from MOS 0302 to 0202, and following his completion of the Fleet Intelligence Course at Dam Neck, Virginia. Taken in its full context -- as all reports must -- the Reporting Senior has conveyed that as a new S-2 (rightfully in the "embryonic" phase), the petitioner's direction and goals were proactive and on a progressive course. Likewise, the word "effusive", taken in total context of the sentence, seems to convey adjectives such as "demonstrative" and "emotionally expressive." Neither of these is negative and did not require the petitioner to have been afforded an opportunity to submit a statement of rebuttal.

c. The petitioner offers no substantiation or corroboration that Report A is inaccurate, unjust, or that he rated anything more than as recorded. That a Career Counselor viewed the report as "noncompetitive" neither invalidates the truth and accuracy of the appraisal nor renders the report "adverse" as that term is defined in reference (b).

d. The petitioner's argument that his separation from the Reporting Senior of Report B somehow prevented a valid assessment is unfounded. Colonel [REDACTED] based his observation as "daily", and although on a different ship, he still had daily means for contact with his staff officers (electronic communications, records, reports, input from others). The fact that Report B was completed a little over two months after the end of

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

the reporting period is not desirable. However, given the activity and environment surrounding the deployed 22nd MEU, such a delay is understandable and hardly invalidates the report. Again, nothing has been furnished to show precisely how or why the petitioner rated anything other than what has been recorded.

e. Adding the names of Majors [REDACTED] and Devlin to page two of Report B was technically proper, regardless of their late arrival to the 22nd MEU. Since the Reporting Senior only had to list their names as if they were being reported on, it is obvious they were not receiving transfer (TR) reports since they had just arrived. Further, the likelihood is they would have been two of the three majors listed below the petitioner in the distribution (although they probably should have actually been listed as "not observed" in Item 15b). In fact, that was to the petitioner's advantage, not the contrary as he implies. Nevertheless, the Reporting Senior was well within his prerogative in authoring the report as reflected.

f. The petitioner's nomination for the Meritorious Service Medal for his time at 22nd MEU is not contradicted by Report B. We specifically note that Report B covers four months of exemplary performance while the award nomination covers an inclusive period of 30 months.

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

6693-01

IN REPLY REFER TO:
1600
MMOA-4
30 Aug 01

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] D. Serok [REDACTED]
USMC of 28 Aug 01.

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

2. Per the reference, we reviewed [REDACTED] record and
petition. [REDACTED] failed selection on the FY-01 and FY-02
USMC Lieutenant Colonel Selection Boards. Subsequently, the
Performance Evaluation Review Board (PERB) denied his request
for removal of the To Duty fitness reports of 890930 to 900224
and the Transfer fitness report of 970801 to 971215. Major
[REDACTED] requests removal of his failures of selection.

3. In our opinion, [REDACTED] record, as it appeared before
the boards, was complete, accurate, and provided a fair
assessment of his performance. The To Duty fitness report of
890930 to 900224 had no significant impact on his overall
performance. Conversely, the Transfer fitness report of 970801
to 971215 did contain enough jeopardy to warrant removal of the
failures of selection had the PERB approved his request. Since
the unfavorable PERB action did not change the competitiveness
of the record, we recommend disapproval of [REDACTED]
request for removal of his failures of selection.

4. POC is [REDACTED] at [REDACTED]

[REDACTED]

Colonel, U. S. Marine Corps
Head, Officer Assignment Branch
Personnel Management Division