



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

BJG
Docket No: [REDACTED]
14 September 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CAPT [REDACTED] USMCR [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 15 May 01 w/attachment
(2) HQMC MMER memo dtd 4 Sep 01 w/encl
(3) HQMC MMOA-4 memo dtd 30 Aug 01
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 2 August to 18 December 1995 and 19 December 1995 to 26 February 1996, copies of which are in enclosure (1) at Tabs A and B respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness reports. Petitioner further requested removal of his failure of selection before the Fiscal Year 2002 Major Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to the grade of major as an officer who has not failed of selection to that grade.

2. The Board, consisting of Messrs. Geisler, Morgan, and Taylor, reviewed Petitioner's allegations of error and injustice on 13 September 2001, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), the HQMC office having cognizance over the subject matter of Petitioner's request to strike his failure of selection for promotion has commented to the effect that this request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

Robert D. Zsalmán
For W. DEAN PFEIFFER
Executive Director

6974-01



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

IN REPLY REFER TO:

1610
MMER
4 Sep 01

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

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

- Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 23 Aug 01
- (2) CMC Advisory Opinion 1610 MMOA-4 of 30 Aug 01
- (3) Copy of CMC ltr 1610 MMER/PERB of 4 Sep 01

1. As evidenced by enclosure (1), PERB removed from Captain [REDACTED] official military record, the fitness reports for the periods 950802 to 951218 (TD) and 951219 to 960226 (TD).

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

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

[REDACTED]

Head, Performance Evaluation
Review Branch
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

0-974-01

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

From: Commandant of the Marine Corps
 To: Captain [REDACTED] USMCR

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>
20 Dec 95	[REDACTED]	950802 to 951218 (TD)
26 Feb 96	[REDACTED]	951219 to 960226 (TD)

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

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 CAPTAIN [REDACTED]
[REDACTED] EMCR

Ref: (a) MMER Request for Advisory Opinion in the case
of Captain [REDACTED]
of 23 Aug 01.

1. Recommend approval of Captain [REDACTED] request for removal
of his failure of selection to Major.

2. Per the reference, we reviewed Captain [REDACTED] record and
his petition. Captain [REDACTED] failed selection on the FY-02
USMC Major Selection Board. Subsequently, he successfully
petitioned the Performance Evaluation Review Board for removal
of the To Duty fitness reports of 950802 to 951218 (TD) and
951219 to 960226 (TD). Captain [REDACTED] requests removal of his
failure of selection.

3. In our opinion, the adverse material in the petitioned
report did present substantial competitive concern to the
record. Therefore, removal of the adverse reports enhances the
competitiveness of the record. Since the adverse reports
likely resulted in Captain [REDACTED] failure of selection, we
recommend approval of his request for removal of his failure
of selection to Major.

4. Point of contact [REDACTED]
[REDACTED]

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