



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

BJG
Docket No: 7545-01
15 October 2001

MAJ [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 Performance Evaluation Review Board (PERB), dated 20 September 2001, a copy of which is attached. They also considered your rebuttal letter dated 9 October 2001.

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.

Concerning the contested fitness report for 22 November 1997 to 8 June 1998, the Board was unable to find that the reporting senior violated the prohibition against damning with "faint praise." They were likewise unable to find that the reporting senior misinterpreted what should be considered in marking item 13g ("tactical handling of troops") of the contested reports for 22 November 1997 to 8 June 1998 and 9 June to 31 July 1998. They did not find any of the contested reports to be internally inconsistent, nor did they find your prior and subsequent record of performance invalidated the reports at issue. Finally, concerning the contested fitness report for 1 August 1998 to 18 June 1999, they were unable to find that you were not the Operations Security Manager.

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

Enclosure

Copy to:
Mary T. Hall, Esq.



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154501
IN REPLY REFER TO:
1610
MMER/PERB
20 SEP 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]'s DD Form 149 of 8 Jun 01
(b) MCO P1610.7D w/Ch 1-4
(c) MCO P1610.7D w/Ch 1-5
(d) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 September 2001 to consider Major [REDACTED] petition in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 971122 to 980608 (CD) - Reference (c) applies
- b. Report B - 980609 to 980731 (DC) - Reference (d) applies
- c. Report C - 980801 to 990618 (CH) - Reference (e) applies

2. The petitioner, via legal counsel, contends that all three reports are in error/unjust, and the grading, along with appraisal comments, ignored many of the petitioner's significant accomplishments over the periods covered. Synopsized, the argument presented is that Lieutenant Colonel [REDACTED] the Reporting Senior of record for all three appraisals, was biased because of the petitioner's prior position. It is further alleged that the Reporting Senior sided with the prior Commander (Lieutenant Colonel [REDACTED] because of safety violations the petitioner cited against HMH-366. Several items of documentary material have been provided in support of reference (a).

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

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a. Although Lieutenant Colonel [REDACTED] might have (emphasis added) resented the petitioner in his capacity as Director of Safety, one would hope the new Commander (Lieutenant Colonel [REDACTED]) would have been grateful to know of existing safety problems within the Squadron over which he was assuming command. The petitioner does not prove otherwise.

b. The three performance evaluations at issue are the assessments of the reporting officials and represent what those officers determined to constitute the petitioner's significant efforts and accomplishments. The importance the petitioner places on his own actions is his alone and not necessarily those of Lieutenant Colonel [REDACTED] or Colonels [REDACTED] and [REDACTED]. Notwithstanding, neither Reviewing Officer corroborates or proves the challenged evaluations are anything less than honest and accurate assessments.

c. Contrary to the petitioner's implications, the fact that Lieutenant Colonel [REDACTED] and the Executive Officer (Major [REDACTED]) received awards subsequent to the period covered by the three reports is in no way a slight to the petitioner's accomplishments during the same period. Their rewards are supposedly based on their specific accomplishments and leadership influences over their Marines and the Squadron mission. Simply stated, Their awards in no way taint the truth or accuracy of the fitness reports under consideration.

d. The petitioner's inference that Report B was somehow contrived because it was a two-month report is not valid. That evaluation was a mandatory close-out report directed to be accomplished in the conversion to the current Performance Evaluation System established by reference (d). Furthermore, Lieutenant Colonel [REDACTED] had submitted the prior six-month report (Report A); he was well aware of the petitioner's performance/qualities, and with the petitioner as the current Operations Officer, the pace of activities was apparently significant enough to warrant the observed nature of the report.

e. The Board views as unfounded, the petitioner's argument that since he maintained contact with Colonel [REDACTED] after his departure as the ASEK Commander, he incurred additional

