



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

BJG
Docket No: 337-02
15 March 2002

MA [REDACTED] JR USMC RET
[REDACTED]
[REDACTED]

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. You requested, in effect, promotion to lieutenant colonel effective 1 October 1999, and further correction of your record to show you were recalled to active duty on 19 November 2001 as a retired lieutenant colonel, rather than a retired major.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 March 2002. 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 advisory opinion furnished by Headquarters Marine Corps, dated 1 February 2002, and a memorandum for the record (MFR) dated 11 March 2002, copies of which are attached. They also considered your rebuttal letter dated 11 March 2002.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to probable material error or injustice. In this connection, they substantially concurred with the comments contained in the advisory opinion. They found the laws concerning removal from a promotion list are inapplicable to your case, as you were not placed on a promotion list. They agreed with your contention that your retirement could have been cancelled, had you submitted a request for such action before your retirement had been effected. However, they were unable to find that you would have submitted such a request, had you known of your selection for promotion. In this regard, they particularly noted the following: your having put in for retirement before you knew the outcome of the Fiscal Year 2000 Lieutenant Colonel Selection Board; your not having submitted a photograph, or any update material, to the selection board; and the information reflected in the MFR. 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

1412/2
MMPR
FEB 1 1999

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

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]
[REDACTED] USMC (RET)

Ref: (a) MMER Route Sheet of 24 Jan 02
(b) ALNAV 021/99 (Dtg 022027Z APR 99)
(c) SECNAVINST 1811.3M
(d) MARADMIN 408/99 (DTG 162112Z SEP 99)
(e) MCO P1400.31B
(f) Title 10 U.S.C.

1. Reference (a) requested an advisory opinion in the case of [REDACTED] is requesting to return to active duty as a lieutenant colonel, not major.

2. The following facts are germane:

a. [REDACTED] was considered as an in zone officer by the FY00 USMC Lieutenant Colonel Promotion Selection Board which convened on 981109. No update material or photo was submitted to the board.

b. MMSR approved [REDACTED]'s request for retirement with an effective date of 990501. He began terminal leave on 990220.

c. Reference (b) announced those officers selected for promotion to lieutenant colonel by the FY00 USMC Lieutenant Colonel Promotion Selection Board. [REDACTED] was listed with a select number of 243 and would not have been promoted until 991001.

d. Reference (c) states "...officers retired voluntarily shall be retired in the highest commissioned officer grade satisfactorily held..." [REDACTED] voluntarily retired in the grade of Major effective 990501.

e. Due to [REDACTED] retirement on 990501, his selection to lieutenant colonel was nullified.

f. Reference (f) states "...a retired member ordered to active duty under section 688 of this title shall be ordered to active

duty in the member's retired grade.") Reference (d) announced those officers authorized to be promoted with an effective date of 991001. [REDACTED] was not among those officers named on the MARADMIN.

g. [REDACTED] stated that he was never notified by HQMC of his selection to lieutenant colonel by the FY00 USMC Lieutenant Colonel Promotion Selection Board. Advance notification of the board results was published via a Personal For (P4) message which was released 990331 and sent to the Commanding General, Marine Corps Development Command. Notification of selection by a promotion board is routinely accomplished via ALNAV's. ALNAV'S are distributed Navy and Marine Corps wide. Additionally, ALNAV 021/99 was posted at the MMPR-1 web page immediately upon release.

h. [REDACTED] further states that because he did not know of his selection, he was never given the opportunity to accept or decline promotion. Per references (d) and ([REDACTED]) would first have to be offered promotion (promotion authority released as a MARADMIN or other message) before he could accept or decline. Since his selection was nullified at the time of his retirement, his name did not appear on reference (d). Therefore, he was not offered promotion to lieutenant colonel and there was no need to accept or decline.

i. Reference (f) states "...a retired member ordered to active duty under section 688 of this title shall be ordered to active duty in the member's retired grade."

3. If [REDACTED] request were approved, his date of rank would be 991001.

4. The point of contact in this matter is Chief Warrant Officer [REDACTED]

[REDACTED]
Major, U.S. Marine Corps
Head, Officer Promotion Section

DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: (703) 614-2293 OR DSN 224-2293
FACSIMILE: (703) 614-9857 OR DSN 224-9857

MEMORANDUM FOR THE RECORD

DATE: 11 MAR .02

DOCKET NO: [REDACTED]

PETITIONER (PET): [REDACTED]

PARTY I CALLED: PET

WHAT I SAID: I ASKED PET IF HE WOULD HAVE BEEN WILLING TO SERVE AT LEAST ANOTHER TWO YEARS, OR UNTIL 1OCT01, SO HIS PENSION WOULD VEST IN THE GRADE OF LTCOL.

WHAT PARTY SAID: PET SAID THAT HE COULD NOT ANSWER THAT QUESTION IN THE AFFIRMATIVE.

B. George

BRIAN J. GEORGE