



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

BJG
Docket No: 6028-00
30 April 2002

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

Subj: MAJ [REDACTED], USMCR (RET), [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 9 May 00 w/attachment
(2) HQMC PERB memo dtd 30 Aug 00
(3) Memo for record dtd 21 Nov 01
(4) Memo for record dtd 15 Jan 02
(5) HQMC RAM memo dtd 24 Aug 00
(6) Subject's ltr dtd 7 Feb 01
(7) HQMC CMT memo dtd 5 Mar 01
(8) Subject's ltr dtd 27 Sep 01 w/encl
(9) HQMC CMT memo dtd 2 Jan 02
(10) 3d ANGLICO ltr dtd 29 Sep 01
(11) CMC ltrs dtd 29 Oct 99, 3 Nov 00, 15 Dec 00,
31 Oct 01, 4 Dec 01, and 28 Feb 02
(12) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by removing five fitness reports and amending a sixth. The six reports in question are those for 2 July to 31 October 1977, 1 November 1977 to 31 January 1978, 1 February to 10 May 1978, 1 July 1979 to 30 June 1980, 28 June to 20 July 1985 and 30 November to 17 December 1986. Copies of these reports are at Tabs A through F, respectively. The report he wanted modified, rather than removed, is that for 28 June to 20 July 1985 (Tab E); the correction he requested is removal of the following reporting senior (RS) comment: "Although [Petitioner] often allowed his judgement to be over-ridden [sic] by enthusiasm, a dangerous potential, I believe this can be corrected with experience and training." As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing three of the five reports Petitioner wanted removed, those for 2 July to 31 October 1977, 1 November 1977 to 31 January 1978 and 1 February to 10 May 1978 (Tabs A through C); and further directed that the report for 28 June to 20 July 1985 (Tab E) be modified as requested. As indicated in enclosures (2) and (3), the PERB also directed modifying, rather than completely removing as Petitioner requested, the reports for 1 July 1979 to 30 June 1980 (Tab D) and 30 November to

17 December 1986 (Tab F). Petitioner also requested removing his failures of selection by the Fiscal Year (FY) 1992 through 1998 Reserve Lieutenant Colonel Selection Boards, so that he will be considered by the selection board next convened to consider officers of his category for promotion to lieutenant colonel as an officer who has not failed of selection to that grade; cancellation of his retirement on 1 June 1998; and restoration to the Reserve Active-Status List effective that date. The memorandum for the record at enclosure (4) shows Petitioner has amended his application by adding a request to insert in his record a memorandum to the effect that his lack of participation in the Marine Corps Reserve from his retirement to the date he is restored to an active status should not be held against him.

2. The Board, consisting of Messrs. Frankfurt, Mazza and Swarens, reviewed Petitioner's allegations of error and injustice on 17 January 2002, and pursuant to its regulations, determined that the limited 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 which were available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner, who retired as an infantry major, pay grade O-4, received the first contested fitness report, for 2 July to 31 October 1977 (Tab A), for service in the grade of second lieutenant, pay grade O-1. In items 13 and 14, the RS assigned Petitioner two marks of "OS" (outstanding, the best among six categories), in "endurance" and "loyalty"; seven of "EX" (excellent, second highest), in "handling enlisted personnel," "training personnel," "personal appearance," "judgment," "force," "personal relations" and "growth potential"; and nine of "AA" (above average, third highest), in "regular duties," "administrative duties," "tactical handling of troops," "military presence," "attention to duty," "cooperation," "initiative," "leadership" and "economy of management." In item 15, "general value to the service," the RS marked Petitioner "AA" to "EX," the fourth best among 10 categories; he ranked Petitioner above one other officer, with two and below 10. In item 16, desirability for service in war, the RS marked the "be glad [to have]" block, the second best of four possible marks. Item 19, "qualified for promotion," was marked "yes." The RS comments were positive except the following:

...He is at times slipshod in the accomplishment of paperwork...He can be somewhat tactless in his dealings with his men but he appears to be sincere in his efforts to improve himself...He is also coaching the Regimental football team which demands additional time be spent away from his platoon.

As shown in enclosure (2), the HQMC PERB has removed this report from Petitioner's record as he requested.

d. The second contested fitness report, for 1 November 1977 to 31 January 1978 (Tab B), documents Petitioner's service in the grade of first lieutenant, pay grade O-2. In items 13 and 14, the same RS assigned Petitioner two marks of "OS," in "endurance" and "loyalty"; 10 of "EX," in "regular duties," "handling enlisted personnel," "training personnel," "tactical handling of troops," "personal appearance," "cooperation," "force," "leadership," "personal relations" and "growth potential"; and six of "AA," in "administrative duties," "military presence," "attention to duty," "initiative," "judgment" and "economy of management." In item 15, the RS again marked him "AA" to "EX"; he ranked him above one other officer, with three and below 10. In item 16, the RS again marked the "be glad" block. Item 19 was marked "yes." The RS comments were positive except the following:

[Petitioner's] performance has gradually improved [illegible] the reporting period...However he slacks off while in garrison. He has been coaching the Regimental football team which hurt him by taking him away from his men...I feel [Petitioner] is capable of becoming a fine officer but he must be constantly motivated to perform Marine Corps administrative matters.

As reflected in enclosure (2), the HQMC PERB has removed this report from Petitioner's record as he requested.

e. The third contested fitness report, for 1 February to 10 May 1978 (Tab C), documents Petitioner's service in the grade of first lieutenant. In items 13 and 14, the same RS assigned Petitioner two marks of "OS," in "endurance" and "loyalty"; 11 of "EX," in "regular duties," "handling enlisted personnel," "training personnel," "tactical handling of troops," "personal appearance," "cooperation," "force," "leadership," "personal relations," "economy of management" and "growth potential"; and five of "AA," in "administrative duties," "military presence," "attention to duty," "initiative" and "judgment." In item 15, the RS again marked him "AA" to "EX"; he ranked him above two other officers, with two and below 10. In item 16, the RS again marked the "be glad" block. Item 19 was marked "yes." The RS comments were positive except the following:

[Petitioner] continues to improve - or at least strives to improve his relationship to his men...

As shown in enclosure (2), the HQMC PERB has removed this report from Petitioner's record as he requested.

f. The fourth contested fitness report, for 1 July 1979 to 30 June 1980 (Tab D), evaluates Petitioner's service in the grade of captain, pay grade O-3. In items 13 and 14, a different RS assigned him two marks of "OS," in "loyalty" and "growth potential"; two of

"EX," in "cooperation" and "initiative"; and nine of "AA," in "regular duties," "additional duties," "administrative duties," "personal appearance," "military presence," "attention to duty," "judgment," "leadership" and "personal relations." In item 15, the RS again marked him "AA" to "EX"; he was ranked below two other officers, with none and above none. In item 16, the RS again marked the "be glad" block. Item 19 was marked "NA" (not applicable). The RS comments were positive except the following:

...who with additional training and experience should develop into an outstanding officer. He is not qualified for promotion at this time but...

As reflected in enclosure (2), the HQMC PERB did not remove this report from Petitioner's record as he requested, but modified it by removing the following RS verbiage: "He is not qualified for promotion at this time but..." Also, as shown in enclosure (3), they changed the mark in item 19 from "NA" to "yes."

g. The fifth contested fitness report, for 28 June to 20 July 1985 (Tab E), from a third RS, also documents Petitioner's service as a captain. Concerning this report, Petitioner asks only that the following be deleted from the RS comments:

Although [Petitioner] often allowed his judgement to be over-ridden [sic] by enthusiasm, a dangerous potential, I believe this can be corrected with experience and training.

As shown in enclosure (2), the HQMC PERB has modified this report as Petitioner requested.

h. The sixth and last contested fitness report, for 30 November to 17 December 1986 (Tab F), also evaluated Petitioner's service as a captain. In items 13 and 14, the same RS who had submitted the fifth contested report assigned Petitioner 12 marks of "OS," in "training personnel," "endurance," "personal appearance," "military presence," "attention to duty," "cooperation," "initiative," "force," "loyalty," "personal relations," "economy of management" and "growth potential"; four of "EX," in "regular duties," "handling officers," "handling enlisted personnel" and "leadership"; and one of "AV" (average), the fourth highest, in "judgment." In item 15, the RS marked him "EX" to "OS," the second best; he did not rank Petitioner against any other officer. In item 16, the RS marked the "particularly desire [to have]" block, the best possible. Item 19 was marked "yes." The RS comments were positive except the following:

...Major handicap: lacks consistency and maturity, often demanding higher standards for troops than does for self. Leadership and professional example for SNCO's [staff noncommissioned officers] and enlisted Marines often confusing. This issue has been addressed and it is believed that with guidance, this highly intelligent officer can become a reliable and dependable asset.

The reviewing officer (RO) concurred with the mark the RS had assigned Petitioner in item 15. The RO's comments, which were otherwise favorable, included the following:

[Petitioner] has been counselled concerning his occasional [sic] lack of maturity. He has responded in a very positive manner and has continued to perform at maximum capacity.

As shown in enclosure (2), the HQMC PERB did not remove this report from Petitioner's record as he requested, but modified it by removing the above quoted RS and RO comments.

i. Petitioner argues that the fitness reports for 1 July 1979 to 30 June 1980 (Tab D) and 30 November to 17 December 1986 (Tab F), which the PERB has modified, should be removed because they include language that rendered them adverse evaluations warranting referral to him, but they were not referred. In the report for 1 July 1979 to 30 June 1980, the comment he considers adverse is the following: "He is not qualified for promotion at this time, but has outstanding growth potential." In the report for 30 November to 17 December 1986, the narrative he considers adverse is as follows:

...lacks consistency and maturity, often demanding higher standards for troops than he does for self. Leadership and professional example for SNCO's and enlisted Marines often confusing. This issue has been addressed and it is believed that with guidance, this highly intelligent officer can become a reliable and dependable asset.

j. Enclosure (2) is the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case. The report reflects the PERB decision to remove three of the five fitness reports Petitioner wanted removed, those for 2 July to 31 October 1977, 1 November 1977 to 31 January 1978 and 1 February to 10 May 1978 (Tabs A through C), as well as the contested comment in the report for 28 June to 20 July 1985 (Tab E). The PERB also modified the remaining two of the five reports Petitioner wanted removed. In the report for 1 July 1979 to 30 June 1980 (Tab D), they changed item 19 ("qualified for promotion") from "NA" to "yes" (enclosure (3) refers), and they removed the RS narrative "He is not qualified for promotion at this time, but..." In the report for 30 November to 17 December 1986 (Tab F), they removed the following RS narrative:

Major handicap: lacks consistency and maturity, often demanding higher standards for troops than does for self. Leadership and professional example for SNCO's and enlisted Marines often confusing. This issue has been addressed and it is believed with guidance, this highly intelligent officer can become a reliable and dependable asset.

The PERB further modified this report by removing the following RO comment:

[Petitioner] has been counseled concerning his occasional [sic] lack of maturity. He has responded in a very positive manner and has continued to perform at maximum capacity.

While the PERB did remove all the unfavorable narrative from this report, they left all the marks, including the "AV" in "judgment" and the five other marks below "OS," including the "EX" to "OS" in item 15.

k. The PERB report at enclosure (2) gives the following explanation for their decision to modify, rather than remove, the report for 1 July 1979 to 30 June 1980 (Tab D):

3.b. ...it is clear that the [RS] based his opinion of the petitioner's qualification for promotion on his recent advancement to the grade of Captain [sic]. That is definitely contrary to the spirit and intent [of the applicable Marine Corps fitness report order] and constitutes an obvious injustice. Given the otherwise positive nature of [the report], the [PERB] finds that excising the objectionable verbiage is a reasonable and fair action.

The PERB report explains as follows their decision to modify, rather than remove, the report for 30 November to 17 December 1986 (Tab F):

3.c. The comments in [this report] to which the petitioner objects are clearly adverse and should have been referred to him for acknowledgment and the opportunity to comment. The [PERB] does not, however, find that complete removal of the report is necessary.

l. The memorandum for the record at enclosure (3) documents that a member of the Board's staff contacted the Chairperson of the HQMC PERB regarding the "NA" mark in block 19 of Petitioner's contested fitness report for 1 July 1979 to 30 June 1980 (Tab D); that the chairperson said this block should have been marked "yes"; and that she agreed to change the mark accordingly.

m. The memorandum for the record at enclosure (4) reflects that a member of the Board's staff contacted Petitioner, to ask him whether he wanted a memorandum filed in his record to the effect that his inactivity in the Marine Corps Reserve from his retirement to his restoration to active status should not be held against him; and the memorandum for the record further shows that Petitioner indicated he did want such a document in his record.

n. In correspondence at enclosure (5), the HQMC Reserve Affairs Management Branch, Reserve Affairs Division (RAM) recommended denial of Petitioner's request for return to the Reserve Active-Status List and removal of his failures of selection before the FY 1992 through 1998 Reserve Lieutenant Colonel Selection Boards. This advisory opinion stated in pertinent part as follows:

...We believe that the corrections to [Petitioner's] record [which at the time did not include the change to item 19 of the contested fitness report for 1 July 1979 to 30 June 1980 (Tab D)] would not have changed the decision of the promotion boards. All of the derogatory information and reports that were stricken were written when [Petitioner] was a Lieutenant [sic] and Captain [sic]. Even after promotion, [Petitioner] was still consistently ranked in the lower quartile against his peers with few exceptions and his record reflects no command time. We believe that [Petitioner] has consistently performed below his peers and any future Lieutenant Colonel [sic] selection board would view him as less than competitive.

o. By letter at enclosure (6), Petitioner submitted a rebuttal statement to the advisory opinion from RAM. He argued that after the relief granted by PERB, his record is significantly more competitive for promotion. He contended that his best chance for selection was his first, however, that selection board considered improper material which was later removed by the PERB. He argued that his chances for command were few, but that he accepted command when offered. He admitted that at times his peer comparison might have been low, however, that does not mean he is less worthy of promotion than his peers. He concluded that the only appropriate remedy is to remove his failures of selection for promotion, and then let a promotion board determine if he is worthy of promotion with a corrected record.

p. In correspondence at enclosure (7), the HQMC Career Management Team (CMT) has commented to the effect that the RAM advisory opinion at enclosure (5) is still accurate. Because of an administrative error in the request for comment, this opinion addressed what impact complete removal of the fitness report for 28 June to 20 July 1985 (Tab E) would have had on Petitioner's chances for selection to lieutenant colonel. As this opinion correctly noted, he never requested complete removal of this report. The CMT opinion further stated in pertinent part as follows:

2. Complete removal of the fitness report for the period 28 Jun[e] [19]85 - 20 Jul[y] [19]85 would have no impact on [Petitioner's] record. Even after taking into consideration the changes directed in [the PERB report at enclosure (2)], [Petitioner's] overall record reflects significant negative trends in over half of the reviewed areas. Trends, identified by more than 10 marks of above average or excellent in the category, are in the following areas: regular duties, administrative duties, handling officer [sic], handling enlisted [personnel], training personnel, personal appearance, military presence, attention to duty, judgment, force, leadership, and presence of mind. Overall, he has been comparatively ranked below his peers throughout his career. Removing the fitness report dated 28 Jun[e] [19]85 - 20 Jul[y] [19]85 would not change these trends nor would it change [Petitioner's] comparative ranking.

q. By letter at enclosure (8), Petitioner submitted another rebuttal to the RAM advisory opinion. This statement is nearly identical to his statement at enclosure (6). With his statement he also included five highly complimentary letters of support, from a retired Marine Corps general, a Marine Corps Reserve lieutenant general, a retired Marine Corps Reserve major general, a Marine Corps Reserve colonel, and a retired Marine Corps Reserve colonel.

r. Enclosure (9) is a second opinion from the HQMC CMT, in which they commented to the effect that Petitioner's request to remove his failures of selection for promotion has merit and warrants favorable consideration. This advisory opinion stated in pertinent part as follows:

1. ...we have reviewed [Petitioner's] record to assess the impact of (1) changing block 19 'Qualified for Promotion' [sic] from "N/A" to "YES" on his fitrep [fitness report] for 1 Jul[y] [19]79-30 Jun[e] [19]80, and (2) removal of fitreps for 1 Jul[y] [19]79-30 Jun[e] [19]80 and 30 Nov[ember] [19]86-17 Dec[ember] [19]86.

2. It is our opinion that changing the mark of "N/A" to "YES" in block 19 of the 1 Jul[y] [19]79-30 Jun[e] [19]80 fitrep is warranted. We believe the "N/A" marking is an administrative error tied to the Reporting Senior's misguided opinion of [Petitioner's] qualification for promotion to major, based on his recent promotion to captain. The PERB has already directed related...comments to be removed ([PERB report at enclosure (2)]).

3. It is also our opinion that the removal of fitreps for 1 Jul[y] [19]79-30 Jun[e] [19]80 and 30 Nov[ember] [19]86-17 Dec[ember] [19]86 would not have a significant impact on the overall competitiveness [of Petitioner's] record. While such action would remove the last remaining "Be Glad" mark from any block 16 and the last remaining "Average" mark..., the entire record would not be materially affected and would still retain several less-than-competitive [sic] characteristics. Previous PERB action ([report at enclosure (2)]) has resulted in the removal or modification of 20% of the observed reports from [Petitioner's] record. Of the remaining 29 observed reports, the following characteristics hold:

a. Over the course of his career, [Petitioner] has had 35 Marines ranked above him, 38 with him, and 13 below him. Removal of the two fitreps removes two of the Marines ranked above him leaving an above/with/below distribution of 33/38/13, which is not substantially different.

b. [Petitioner] has been ranked "Outstanding" in Overall Value & Distribution 8 of 29 times, or 28%. Of those reports, where several Marines were ranked "Outstanding" and distribution was broken out on the second page of the fitrep, [Petitioner] was ranked last 3 out of 5 times (3 of 3, 2 of 2, 6 of 6), ranked 4 of 5 once, and ranked first (1 of 2) only once.

c. As a major, [Petitioner] was ranked "Excellent" in 'Growth Potential' [sic] on 3 of his last 6 reports, including his final report. His final report contained 2 additional markings of less than "Outstanding", namely an "Excellent" in 'Personal Appearance' [sic] and 'Judgment' [sic].

4. It should be noted that each of the corrections made to [Petitioner's] record have involved fitreps that were more than 15 years old, which could have been identified by [Petitioner] and addressed well before [Petitioner] was ever eligible for promotion to lieutenant colonel. Nonetheless, due to the extensive corrections made to [Petitioner's] record over the past one and 1/2 years, we believe he should be given the opportunity to compete as an in-zone officer for promotion to lieutenant colonel before a selection board, as he has requested.

s. Enclosure (10) is a letter of support from the Commanding Officer, 3d ANGLICO.

t. Enclosure (11) consists of six thank-you letters from the current Commandant of the Marine Corps to Petitioner, all of which were sent after Petitioner's retirement.

u. Because of Petitioner's failures of selection for promotion, his removal from an active status in the Marine Corps Reserve was mandatory. He was transferred to the Retired Reserve on 1 June 1998. He has already earned eligibility for a reserve pension at age 60.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting full relief, except removal of the fitness report for 1 July 1979 to 30 June 1980 (Tab D).

Contrary to the PERB report at enclosure (2), the Board finds that the fitness report for 30 November to 17 December 1986 (Tab F) should be completely removed. In this connection, they conclude that the marks were tainted by the narrative which the PERB has already removed.

The Board agrees with the PERB conclusion that the fitness report for 1 July 1979 to 30 June 1980 (Tab D), as modified, should stand. They find that this report, as it has been amended, completely corrects the RS's error and removes any adverse element.

The Board finds that Petitioner's failures of selection should be removed and that his retirement, which was by reason of those failures, should be set aside. In this regard, they substantially concur with the most recent advisory opinion from CMT, at enclosure (9). They further find that removal of the marks in the fitness report for 30 November to 17 December 1986, particularly the "AV" in "judgment," could have enhanced his competitiveness for promotion.

Finally, the Board finds that in the interest of completely correcting the injustice in Petitioner's case, his record should include a memorandum admonishing reviewers of his record not to hold against him his inactivity in the Marine Corps Reserve from his retirement to his restoration to active status.

In view of the above, the Board recommends the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of	Report To
22 Feb 87	[REDACTED] USMC	30 Nov 86		17 Dec 86

b. That there be inserted in his naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That the magnetic tape maintained by HQMC be corrected accordingly.

d. That Petitioner's naval 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 lieutenant colonel as an officer who has not failed of selection for promotion to that grade.

e. That Petitioner's record be corrected further to show that he was not transferred to the Retired Reserve on 1 June 1998, but remained on the Reserve Active-Status List after that date; and that he be reinstated to an active status accordingly.

f. That there be inserted in Petitioner's naval record, at an appropriate location, a memorandum containing relevant identifying data and including the following language:

Subject officer was retired from the Marine Corps Reserve effective 1 June 1998. Subsequently, this retirement was voided by order of the Secretary of the Navy. Since subject officer was retired by reason of error and through no fault of his own, and since this retirement has now been voided, it is directed that he not be penalized in any way by reason of his inability to serve while the retirement was in effect.

g. 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.

h. That any material directed to be removed from Petitioner's naval record be returned to this 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.

i. That the remainder of Petitioner's request be denied.

4. 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.

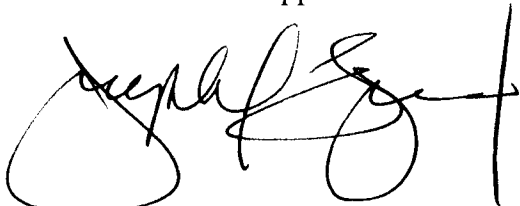
ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.

Robert D. Zsalmán
For W. DEAN PFEIFFER

Reviewed and approved: AUG 16 2002



Joseph G. Lynch
Assistant General Counsel
(Manpower and Reserve Affairs)



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

IN REPLY REFER TO:
1610
MMER/PERB
30 AUG 2000

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] USMCR (RET)

Ref: (a) Major [REDACTED] DD Form 149 of 9 May 00
(b) MCO P1610.7B
(c) MCO P1610.7B w/Ch 1-2 and ALMAR 099/85
(d) MCO P1610.7C w/Ch 1

Encl: (1) CMC Advisory Opinion 1610/RAM dtd 24 Aug 00

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 9 August 2000 to consider Major [REDACTED] petition contained in reference (a). Action as indicated was requested on the following fitness reports:

a. Report A - 770702 to 771031 (GC) -- Removal in its entirety. Reference (b) applies.

b. Report B - 771101 to 780131 (SA) -- Removal in its entirety. Reference (b) applies.

c. Report C - 780201 to 780510 (CD) -- Removal in its entirety. Reference (b) applies.

d. Report D - 790701 to 800630 (SB) -- Removal in its entirety. Reference (b) applies.

e. Report E - 850628 to 850720 (SC) -- Elimination of verbiage from Section C. Reference (c) applies.

f. Report F - 861130 to 861217 (RT) -- Removal in its entirety. Reference (d) applies.

2. The petitioner contends that all six reports contain information and comments that reflect unfavorably on his personal and professional performance attributes a Marine officer. As such, he believes they should have been processed as "adverse matter" prior to their incorporation into his official record.

3. In its proceedings, the PERB concluded that:

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

a. The removal of Reports A, B, and C, is warranted and has been directed. Likewise, the removal of the challenged verbiage from Report E is warranted and has also been directed.

b. In reviewing Report D, it is clear that the Reporting Senior based his opinion of the petitioner's qualification for promotion on his recent advancement to the grade of Captain. That is definitely contrary to the spirit and intent of reference (b) and constitutes an obvious injustice. Given the otherwise positive nature of Report D, the Board finds that excising the objectionable verbiage is a reasonable and fair action. In this regard, removal of the following has been directed: "He is not qualified for promotion at this time but"

c. The comments in Report F to which the petitioner objects are clearly adverse and should have been referred to him for acknowledgment and the opportunity to comment. The Board does not, however, find that complete removal of the report is necessary. Instead, they have directed elimination of all Section C verbiage beginning with "Major handicap:" and continuing to end of the narrative portion. Additionally, and although not identified by the petitioner, the Board found that the Reviewing Officer also added adverse material that should have been acknowledged by the petitioner. Once again, the Board has directed modification, to wit: Removal of the following from the Reviewing Officer's comments: "Captain [REDACTED] has been counselled concerning his occasional lack of maturity. He has responded in a very positive manner and has continued to perform at maximum capacity."

4. The Board's opinion, based on deliberation and secret ballot vote, is that Reports D and F, as modified, should remain a part of Major [REDACTED] official military record. The limited corrective actions identified in subparagraphs 3b and 3c are considered sufficient.

5. The enclosure is furnished to assist in resolving Major [REDACTED] request for the removal of his failures of selection.

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

6. 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
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IN REPLY REFER TO:

1610
RAM
24 Aug 00

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

Subj: ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMCR (RET)

Ref: (a) Maj [REDACTED] BCNR request dtd 9 May 2000

1. Recommend disapproval of [REDACTED] request to be reinstated to the Active Status List and removal of failures of selection.

2. After having reviewed Maj [REDACTED] record the following opinion is provided: Maj [REDACTED] failed selection on the FY92 through the FY98 USMCR Lieutenant Colonel Selection Boards. Major [REDACTED] successfully petitioned the Board for Correction of Naval Records (BCNR) for removal of the following fitness reports: 770702-771031 (GC), 771101-780131 (SA) and 780201-780510 (CD). [REDACTED] also had verbiage removed from 3 other fitness reports with the following dates: 790731-800630 (SB), 850628-850720 (SC) and 861130-861217 (RT). We believe that the corrections to [REDACTED] record would not have changed the decision of the promotion boards. All of the derogatory information and reports that were stricken were written when Major [REDACTED] was a Lieutenant and Captain. Even after promotion, Major [REDACTED] is still consistently ranked in the lower quartile against his peers with few exceptions and his record reflects no command time. We believe that M [REDACTED] has consistently performed below his peers and any future Lieutenant Colonel selection board would view him as less than competitive.

3. Point of contact regarding this matter is [REDACTED]
[REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Assistant Head,
Reserve Affairs Management Branch
Reserve Affairs Division



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

IN REPLY REFER TO:

1600
CMT
5 Mar 01

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

Subj: RESERVE AFFAIRS ADVISORY OPINION ON BCNR CASE; CASE OF
MAJOR [REDACTED]

Ref: (a) BCNR ltr dtd 13 Feb 01
(b) MMER/PERB ltr dtd 30 Aug 00
(c) RAM ltr dtd 24 Aug 00

1. Per reference (a), a review of Major [REDACTED] record has been conducted. No documentation was provided showing that Major [REDACTED] requested the fitness report for the period 28 Jun 85-20 Jul 85 be removed from his record. Per reference (b), the Performance Evaluation Review Board already directed certain verbage be removed from that fitness report. Therefore, reference (c) is still accurate. The following additional comments are provided.

2. Complete removal of fitness report for the period 28 Jun 85 - 20 Jul 85 would have no impact on [REDACTED] record. Even after taking into consideration the changes directed in reference (b), M [REDACTED] overall record reflects significant negative trends in over half of the reviewed areas. Trends, identified by more than 10 marks of above average or excellent in the category, are in the following areas: regular duties, administrative duties, handling officer, handling enlisted, training personnel, personal appearance, military presence, attention to duty, judgment, force, leadership, and presence of mind. Overall, he has been comparatively ranked below his peers throughout his career. Removing the fitness report dated 28 Jun 85 -20 Jul 85 would not change these trends nor would it change [REDACTED] comparative ranking.

3. Based on a review of his record, we do not believe that the removal of the fitness report identified in reference (a) substantially changes [REDACTED] overall record of performance or his competitiveness for promotion.

4. Point of contact is [REDACTED]

By direction



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

IN REPLY REFER TO:
1610
CMT
2 Jan 02

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

Subj: REQUEST FOR ADVISORY OPINION ON BCNR APPLICATION;
CASE OF MAJOR [REDACTED] USMCR (Ret)

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] dtd 27 Nov 01
(b) PERB Advisory Opinion on BCNR application in the case
of Major [REDACTED] dtd 30 Aug 00

1. Per reference (a), we have reviewed [REDACTED] record to assess the impact of (1) changing block 19 'Qualified for Promotion' from "N/A" to "YES" on his fitrep for 1 Jul 79-30 Jun 80, and (2) removal of fitreps for 1 Jul 79-30 Jun 80 and 30 Nov 86-17 Dec 86.

2. It is our opinion that changing the mark of "N/A" to "YES" in block 19 of the 1 Jul 79-30 Jun 80 fitrep is warranted. We believe the "N/A" marking is an administrative error tied to the Reporting Senior's misguided opinion of Major [REDACTED] qualification for promotion to major, based on his recent promotion to captain. The PERB has already directed related Section C comments to be removed (reference (b)).

3. It is also our opinion that the removal of fitreps for 1 Jul 79-30 Jun 80 and 30 Nov 86-17 Dec 86 would not have a significant impact on the overall competitiveness [REDACTED] record. While such action would remove the last remaining "Be Glad" mark from any block 16 and the last remaining "Average" mark from any Section B, the entire record would not be materially affected and would still retain several less-than-competitive characteristics. Previous PERB action (reference (b)) has resulted in the removal or modification of 20% of the observed reports from [REDACTED] record. Of the remaining 29 observed reports, the following characteristics hold:

a. Over the course of his career, [REDACTED] has had 35 Marines ranked above him, 38 with him, and 13 below him. Removal of the two fitreps removes two of the Marines ranked

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above him leaving an above/with/below distribution [REDACTED]
which is not substantially different.

b. [REDACTED] has been ranked "Outstanding" in Overall Value & Distribution 8 of 29 times, or 28%. Of those reports where several Marines were ranked "Outstanding" and distribution was broken out on the second page of the fitrep, M [REDACTED] was ranked last 3 out of 5 times (3 of 3, 2 of 2, 6 of 6), ranked 4 of 5 once, and ranked first (1 of 2) only once.

c. As a major, [REDACTED] was ranked "Excellent" in 'Growth Potential' on 3 of his last 6 reports, including his final report. His final report contained 2 additional markings of less than "Outstanding", namely an "Excellent" in 'Personal Appearance' and 'Judgment'.

4. It should be noted that each of the corrections made to [REDACTED] record have involved fitreps that were more than 15 years old, which could have been identified by [REDACTED] and addressed well before [REDACTED] was ever eligible for promotion to lieutenant colonel. Nonetheless, due to the extensive corrections made to [REDACTED] record over the past one and 1/2 years, we believe he should be given the opportunity to compete as an in-zone officer for promotion to lieutenant colonel before a selection board, as he has requested.

5. Point of contact is [REDACTED] (703) 78 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
By direction [REDACTED]