



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

DN

BJG
Docket No: 2101-03
22 October 2003

LTCOL [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Colonel [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.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of both contested fitness reports, for 14 April to 4 July 1988 and 5 July to 31 December 1988.

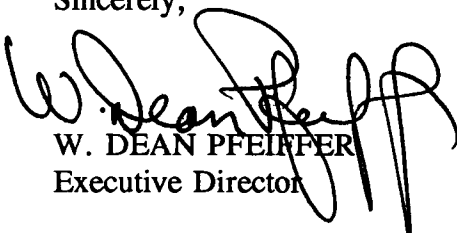
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 October 2003. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 Branch, Personnel Management Division, dated 6 March 2003 with enclosure, and the advisory opinion from the HQMC Career Management Team (CMT), dated 4 March 2003, copies of which are attached.

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 advisory opinion from CMT in concluding your failure of selection by the Fiscal Year (FY) 2003 Reserve Lieutenant Colonel Selection Board, convened on 12 March 2002, should stand. The Board found your selection would have been definitely unlikely, even if the record presented to that promotion board had not included the fitness reports whose removal has been directed. The Board recognized you were selected by the FY 2004 Reserve Lieutenant Colonel Selection Board, convened on 14 January 2003, with an uncorrected fitness report record and status as having failed of selection for promotion; but further noted your record before that promotion board included the additional favorable fitness report for 1 January to 13 September 2002, which showed your completion of the Marine Corps

Command and Staff College. In view of the above, your application for relief beyond that effected by CMC 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

IN REPLY REFER TO:
1610
MMER
6 Mar 03

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

Subj: BCNR APPLICATION IN THE CASE OF MAJOR [REDACTED]
[REDACTED] USMCR

- Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 13 Feb 03
- (2) CMC Advisory Opinion 1600 CMT of 4 Mar 03
- (3) Copy of CMC ltr 1610 MMER/PERB of 5 Mar 03

1. As evidenced by enclosure (1), PERB removed from Major [REDACTED] official military record, the fitness reports for the periods 880414 to 880704 (DC) and 880705 to 881231 (SA).

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

3. By enclosure (3), this Headquarters provided [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

IN REPLY REFER TO:
1610
MMER/PERB
FEB 13 2003

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

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>
13 Jul 88	Capt P [REDACTED]	880414 to 880704 (DC)
9 Jan 89	Capt P [REDACTED]	880705 to 881231 (SA)

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
CMT
4 Mar 03

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

Subj: RESERVE AFFAIRS ADVISORY OPINION ON BCNR APPLICATION;
CASE [REDACTED] USMCR

1. We have reviewed [REDACTED] request for removal of his failure of selection (FOS) based on the removal of the two fitness reports and recommend disapproval based on the below rationale.

2. The two fitness reports in question, a directed change report for the period 880414 to 880704 and a semi-annual report 880705 to 881231 cover a total of eight and a half months of a 15-year career at the time of FY03 Lieutenant Colonel USMCR Board. As a lieutenant he never broke out from his peers, being rated above 3, with 4 and below 15. Furthermore, on the fitness report for the period 870310 to 870910, the reviewing officer did not concur with the reporting senior on the judgment marking and would have marked him down to above average. As a Captain he was rated below 4 of his peers and above 3. His record as Major shows improvement and growth, and he consistently ranks near the top of the reporting senior's marks. However, when his entire record is viewed as a whole, and recognizing the competitive nature of the selection process, he consistently ranked below his peers and did not break out until late in his career. The removal of the two fitness reports does not substantially change his overall performance as reflected in his record.

3. Our point of contact is [REDACTED] Bennett at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
By direction