



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

JSR
Docket No. 09249-09
29 October 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 1 Jul 09 w/attachments
(2) HQMC MMER/PERB memo dtd 26 Aug 09
(3) HQMC MMOA-4 memo dtd 31 Aug 09
(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 modifying the fitness report for 31 May to 9 September 2006 (copy at Tab A), in accordance with letters from the reporting senior (RS) dated 31 May 2009 and reviewing officer (RO) undated, by raising the marks in sections F.1 ("Leading Subordinates"), F.3 ("Setting the Example"), F.4 ("Ensuring Well-being of Subordinates"), G.1 ("Professional Military Education") and G.2 ("Decision Making Ability") from "D" (fourth best of seven possible marks) to "E" (third best). As shown in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed the requested modifications of this report. Petitioner further requested modifying the fitness report for 5 May 2007 to 31 May 2008 (copy at Tab B), in accordance with letters from the RS dated 16 April 2009 and RO dated 31 May 2009, by raising the mark in section G.1 from "E" to "F" (second best) and section H.1 ("Evaluation Responsibilities") from "D" to "F" and adding the justifications provided in the RS's letter. Finally, he requested removal of his failure of selection before the Fiscal Year 2010 Lieutenant Colonel Selection Board, so as to be considered by the selection board that next convenes to consider officers of his category for promotion to the grade of lieutenant colonel as an officer who has not failed of selection to that grade.

2. The Board, consisting of reviewed Petitioner's allegations of error and injustice on 29 October 2009, 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. Enclosure (2), the report of the PERB, reflects that Petitioner's request concerning the report for 31 May to 9 September 2006 was granted, but comments to the effect that Petitioner's request to modify the report for 5 May 2007 to 31 May 2008 should be denied.

c. 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 in light of the partial relief PERB directed.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) and (3), the Board finds the existence of an injustice warranting partial relief, specifically, removal of Petitioner's failure of selection to lieutenant colonel. Although the Board votes not to modify the report for 5 May 2007 to 31 May 2008, Petitioner may submit the RS's letter dated 16 April 2009 and the RO's letter dated 31 May 2009 to future selection boards. In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. 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.

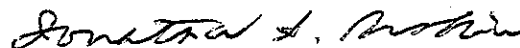
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

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

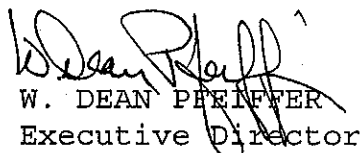
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



JONATHAN S. RUSKIN
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.



W. DEAN PFEIFFER
Executive Director