



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

JSR
Docket No. 9788-09
19 November 2009

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

Subj: MAJ S [REDACTED] USMC [REDACTED]
REVIEW OF NAVAL RECORD

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

- Encl: (1) DD Form 149 dtd 1 Jul 09 w/attachments
and e-mails dtd 2 and 6 Jul 09
(2) HQMC MMER/PERB memo dtd 21 Aug 09
(3) HQMC MMOA-4 memo dtd 3 Sep 09
(4) HQMC MMER e-mail dtd 18 Sep 09
(5) HQMC MIO memo dtd 27 Oct 09 w/enclosure
(6) 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 27 July 2004 to 31 May 2005 (copy at Tab A), by removing section K (reviewing officer's marks and comments), and removing completely the fitness reports for 26 January to 18 April 2008 and 19 April to 14 July 2008 (copies at Tabs B and C). As shown in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board has directed all the requested corrections of Petitioner's fitness report record. He further requested removing the service record page 11 ("Administrative Remarks (1070)") entry dated 15 April 2008, a copy of which is in enclosure (1) at Tab A, and the Marine Corps Total Force System (MCTFS) Body Composition Program (BCP) entry for 18 April 2008 to 30 March 2009. Finally, he requested removing his failures of selection by the Fiscal Year (FY) 2008, 2009 and 2010 Lieutenant Colonel Selection Boards, 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. He was considered by the FY 2011 Lieutenant Colonel Selection Board, convened on 25 August 2009, but the results of that promotion board have not been announced.

2. The Board, consisting of
 , reviewed Petitioner's allegations of error and injustice on 19 November 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, shows Petitioner's request to correct his fitness report was granted in full.

c. In enclosure (3), MMOA-4, the HQMC Officer Counseling and Evaluation Section, commented to the effect that Petitioner's failures of selection to lieutenant colonel should not be removed, notwithstanding the PERB action, in view of the noncompetitive cumulative relative values in his fitness reports as a major, as well as a fitness report date gap.

d. Enclosure (4) provides the basis for the PERB decision.

e. In enclosure (5), MIO, HQMC Manpower Information Operations, commented to the effect that Petitioner's request to remove the page 11 entry and MCTFS BCP entry has merit and warrants favorable action. A copy of the BCP entry is enclosed with the MIO advisory opinion.

f. The FY 2008, 2009 and 2010 Lieutenant Colonel Selection Boards convened on 6 September 2006, 5 September 2007 and 3 September 2008, respectively.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting full relief. In light of enclosures (4) and (5), the Board finds that the contested page 11 and BCP entries should be removed. Notwithstanding enclosure (3), the Board finds Petitioner's

failures of selection to lieutenant colonel should be removed as well. In this regard, the Board recognizes it may well be correct that Petitioner would have failed of selection in any event. However, in view of the significant changes made to his fitness report record, the Board is not prepared to accept the speculation of MMOA-4 as to whether he might have been selected, had he enjoyed the benefit of a corrected record. In view of the above, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 15 April 2008. This is to be accomplished by physically removing the page 11 on which the entry appears, or completely obliterating the entry so it cannot be read, rather than merely lining through it.

b. That his MCTFS data be corrected by removing the BCP entry for 18 April 2008 to 30 March 2009.

c. That his record be corrected further 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.

d. 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.

e. 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.

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.

W. Dean Pfeiffer
W. DEAN PFEIFFER

Reviewed and approved:

Robert L. Woods

12/2/09

ROBERT L. WOODS
ASSISTANT GENERAL COUNSEL
(MANPOWER & RESERVE AFFAIRS)