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DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

JSR

Docket No: NRB165-13

30 October 2014

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

- Encl: (1) DD Form 149 dtd 7 Aug 13 w/attachments
(2) Copy of uncorrected fitrept for
23 May - 31 Oct 09
(3) HQMC MMRP-50 memo dtd 12 Aug 14
(4) Subject's ltr dtd 4 Sep 14 w/enclosures
and ref 1
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, reconsideration of his previous request, docket number NR6853-13, denied on 15 August 2013, to modify the fitness report for 14 January 2008 to 1 June 2009. As he had provided no new and material evidence or other matter not previously considered, this request was not reconsidered. He also made a new request to remove his failure of selection by the Fiscal Year (FY) 2014 Lieutenant Colonel Selection Board and grant him consideration by a special selection board (SSB). After he had submitted his application, he failed of selection by the FY 2015 Lieutenant Colonel Selection Board. It is presumed he also requests removing his failure of selection by that promotion board.

2. The Board, consisting of Messrs. [REDACTED] reviewed Petitioner's allegations of error and injustice on 30 October 2014. Pursuant to the Board's regulations, the majority, Messrs. [REDACTED] determined that the corrective action indicated below should be taken on the available evidence of record. The minority, [REDACTED] recommended that Petitioner's request be denied. 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. Enclosure (1) was filed in a timely manner.

c. The Headquarters Marine Corps (HQMC) Performance Evaluation Review Board granted Petitioner's request to modify the fitness report for 23 May to 31 October 2009 by raising the marks in sections D.1 ("Performance") and D.2 ("Proficiency") from "D" (fourth best of seven possible marks) to "E" (third best) and raising the mark in section K.3 (reviewing officer's "Comparative Assessment") from the fourth best of eight possible marks to the third best. A copy of the uncorrected report is at Tab A. These corrections were effected on 27 June 2013, after Petitioner had failed of selection by the FY 2014 Lieutenant Colonel Selection Board (convened on 14 August 2012), but before his failure of selection by the FY 2015 promotion board (convened on 20 August 2013).

d. In enclosure (3), the HQMC Counseling and Evaluation Personnel Management Division commented to the effect that Petitioner's request should be denied, because the changes to his fitness report would not have enhanced his competitiveness relative to his peers. That office identified aspects of his record that would have reduced his chances for selection.

e. In enclosure (4), Petitioner's reply to the advisory opinion at enclosure (3), Petitioner maintained that he would have been competitive before the FY 2014 promotion board, had he enjoyed the benefit of a corrected record.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (3), the majority of the Board finds an injustice warranting the requested relief. In this regard, the majority is not persuaded that Petitioner's selection by the FY 2014 promotion board, with a corrected fitness report record, would have been definitely unlikely. The majority notes that Petitioner's failure of selection by the FY 2015 promotion board, for which he had a corrected fitness report record, must

be removed to restore him to the status he had for the FY 2014 board, as an officer who had not failed of selection. In view of the above, the majority recommends the following corrective action:

MAJORITY 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 he be afforded SSB consideration for the FY 2014 Lieutenant Colonel Selection Board and, if necessary, the FY 2015 Lieutenant Colonel Selection Board.

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

MINORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the minority of the Board substantially concurs with enclosure (3) in finding Petitioner's request should be denied. Accordingly, the recommendation of the minority is as follows:

MINORITY RECOMMENDATION:

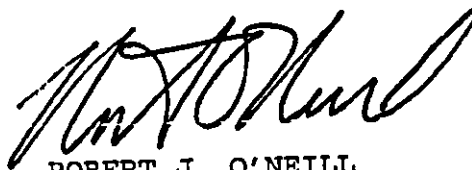
a. That Petitioner's request be denied.

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.

Jonathan S. Ruskin

JONATHAN S. RUSKIN
Recorder

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

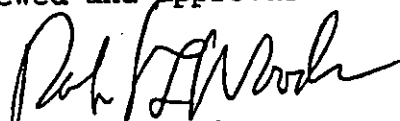


ROBERT J. O'NEILL

MAJORITY REPORT

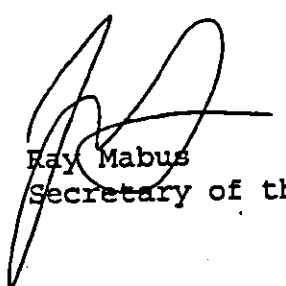
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Recommendations a and c reviewed and approved; recommendation b reviewed and approval recommended:



ROBERT L. WOODS
Assistant General Counsel
(Manpower and Reserve Affairs)
1000 Navy Pentagon, Rm 4D548
Washington, DC 20350-1000

Consideration by an SSB for the FY 2014 Lieutenant Colonel Selection Board and, if necessary, the FY 2015 Lieutenant Colonel Selection Board is approved:



Ray Mabus
Secretary of the Navy

FEB

FEB 26 2015

~~MINORITY REPORT~~

~~Reviewed and approved:~~ _____