



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

[REDACTED]  
Docket No: 3006-16

**AUG 15 2016**

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USMC,  
XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149 w/attachment  
(2) Case Summary  
(3) MMRP-13/PERB memo dtd 29 Feb 16  
(4) MMRP-50 memo dtd 20 Apr 16

1. Pursuant to the provisions of reference (a), Petitioner, a commission officer of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his record be corrected by removing Section "K" Reviewing Officer (RO) comparative assessment from his fitness report covering the period from 20090109 to 20090531, removal of his fitness report covering the period from 20090601 to 20100110, and removal of his failure of selection (FOS) by the Fiscal Year (FY) 2017 Major Selection Board (MSB) from his Official Military Personnel File (OMPF). Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 12 August 2016, 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. In addition, the Board considered the advisory opinions furnished by the Headquarters Marine Corps (MMRP-13/PERB) and MMRP-50, copies of which are provided as enclosure (3) and (4).

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

c. On or about 24 November 2015, the Performance Evaluation Review Board (PERB) reviewed and directed changes to Petitioner's fitness report ending 20080712, to include making it a "Not Observed" report. As a result of the changes, Petitioner requested that his FOS by the FY16 MSB be removed from his OMPF. An advisory opinion from Headquarters Marine Corps (MMRP-50) recommended that his FOS by the FY16 MSB be removed from his OMPF. On 12 April 2016, this Board directed Petitioner's FOS by the FY16 MSB be removed from his OMPF.

d. Petitioner states, in part, that his fitness report ending 20090531, is inaccurate and unfair because the RO's comparative assessment in Section "K" is inconsistent with the K-4 comments, that the RO concurred with the Reporting Senior's (RS) assessment, and that the RO only states he was "progressing with his peers" and recommended that he be promoted with his peers. Enclosure (3) states, in part, that while the RO concurred with the RS, he was not bound by Marine Corps directives to mirror the RS's assessment. The RO is to compare the Marine against all other Marines of that grade professionally known to the RO. He was assessed as "A Qualified Marine." The fact that Petitioner was progressing and should be promoted with his peers is an assessment which neither conflicts with nor diminishes the RS's assessment.

e. Petitioner states, in part, that with regard to his fitness report ending 20100110, his attribute marks are inconsistent with his Section I comments of the report. He states that the RS was directed by CO to change his grading philosophy and grade subsequent captains higher, the RO concurred with the RS's assessment but the comments do not support the concurrence, and his career counselor inform him that the report may have been the reason for his non-selection by the FY15 MSB. Enclosure (3) further states, in part, that when the RS completed and signed the report almost six years ago, he attested to an accurate and unbiased assessment of the Petitioner. In Petitioner's advocacy letter dated 7 August 2015, the RS does not claim to have been directed by the CO to change his grades, but mentioned he was counseled by the RO to re-evaluate the way he rates Captains. Section I provides the RS a location to enter remarks prohibited elsewhere in the report, the section is not to justify attribute marks, and nothing in Marine Corps directives state to align attribute marks to corresponding wording. The validity of a fitness report is not whether it is a competitive report; rather the validity of the report is in the truth and accuracy of the overall assessment.

f. Enclosure (4), states that Petitioner's request to have his FOS by the FY17 MSB removed from his OMPF, has merit and warrants favorable action. The advisory states, in part, that his fitness report ending 20080712, originally showed a decrease in the comparative assessment from the RO. By changing the report to a non-observed, the decrease is erased. The decrease may have made his appear less competitive than his peers. It is recommended that his FY17 FOS by the MSB be removed from his OMPF, and that he be given a full brief afforded an In-Zone officer.

g. The Board concurs with enclosure (3) that Petitioner's fitness reports ending 20090531 and 20100110 should remain a part of his OMPF. Specifically, he failed to establish an inaccuracy or injustice warranting the modification or removal of either report.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (4), the Board finds the existence of an injustice warranting the following corrective action:

RECOMMENDATION:

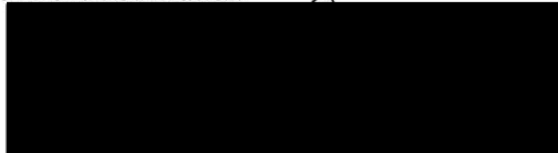
a. That Petitioner's naval record be corrected by removing his FOS by the FY17 MSB from his OMPF.

b. That Petitioner be considered by the earliest possible MSB Board convened to consider In-Zone officers of his category for promotion to Major.

c. That no further relief be granted.

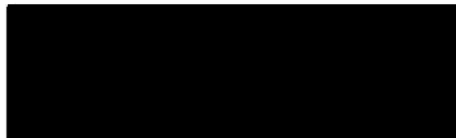
d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.



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 Regulation, 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.



Executive Director