



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

[REDACTED]
Docket No: 9882-17

JAN 09 2018

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

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

Ref: (a) 10 U.S.C. §1552

- Encl:
- (1) DD Form 149 signed 31 Jan 17
 - (2) DD Form 149 signed 23 Feb 17
 - (3) FITREP for the reporting period 1 Feb 11 to 31 May 11
 - (4) FITREP for the reporting period 8 Jul 09 to 1 Dec 09
 - (5) HQMC memo 1610 MMRP-13/PERB of 2 Aug 17
 - (6) CMC ltr 1610 MMRP-13/PERB of 24 Aug 17
 - (7) HQMC memo 1610 MMRP-50 of 8 Aug 17
 - (8) HQMC memo 1610 MMRP-50 of 27 Oct 17

1. Pursuant to the provisions of reference (a), Petitioner, a commissioned officer in the Marine Corps, filed enclosure (1) with this Board requesting that his record be corrected by modifying his fitness reports (FITREP) at enclosure (3), and to have his failure of selection (FOS) incurred by the FY18 USMC Lieutenant Colonel Promotion Selection Board removed. Additionally, he filed enclosure (2) with this Board requesting that his record be corrected by modifying his FITREP at enclosure (4) and again to have his FOS incurred by the FY18 USMC Lieutenant Colonel Promotion Selection Board removed.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 December 2017, 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, together with any material submitted in support thereof, relevant portions of the naval records, and applicable statutes, regulations, and policies. In addition, the Board considered the advisory opinions (AO) provided by Headquarters, Marine Corps (MMRP-13) and (MMRP-50) at enclosures (5) through (8).

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.

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

b. Petitioner was issued a FITREP for the reporting period 1 February 2011 to 31 May 2011. He requested that Section A be changed to reflect Item 5.b. as "Not Observed," but that the Directed and Additional Comments in Section I remain. Further, he requested that Section K be changed to reflect Item 1 as "Insufficient," to remove the marks in Section K-2 and K-3, but that comments in Section K-4 remain. Petitioner contended that the Relative Value of "80" is an unjustified blemish on his record, that the attribute marks are contrary to the word picture, and that the Reporting Senior did not have enough time to observe him and is not written in accordance with the Performance Evaluation System Manual. The Headquarters, Marine Corps Performance Evaluation Review Board (PERB) modified this contested FITREP by implementing all requested changes to Section K. However, the PERB did not change Item 5.b. to "Not Observed or remove any Section I comments.

c. Petitioner was issued a FITREP for the reporting period 8 July 2009 to 1 December 2009 (enclosure (4)). All requested changes to this FITREP were made by the PERB prior to the convening of this Board.

d. On 23 August 2016, the FY18 USMC Lieutenant Colonel Promotion Selection Board convened. Petitioner was considered as an eligible, in-zone officer and failed selection for promotion. The contested FITREPs at enclosures (3) and (4) were available for consideration by the Promotion Selection Board members. On 22 August 2017, the FY19 USMC Lieutenant Colonel Promotion Selection Board convened. Petitioner was considered as an eligible, above-zone officer and the results of that Board are pending release.

e. Headquarters, Marine Corps provided four AOs. Enclosure (5) opined that Petitioner's contested FITREP at enclosure (4) should remain in his record, with the modifications already made by the PERB. The AO at enclosure (6) reflects all changes requested by the Petitioner in enclosure (2) have been made by the PERB, with the exception of his request to remove his FY18 FOS. Enclosures (7) and (8) opined that the PERB made substantive changes to Petitioner's FITREPs, which were available for consideration by the FY18 Promotion Selection Board when he failed selection for promotion. Thus, his request to remove his FY18 FOS is clearly warranted and that he should be given the full brief afforded an in-zone officer by the next convening promotion selection board.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In this regard, the Board noted that Petitioner's record was corrected by the PERB, but only after he incurred an in-zone FOS. The Board believed that the contested FITREPs may have made Petitioner less competitive than his peers when he failed selection by the FY18 USMC Lieutenant Colonel Promotion Selection Board. Thus, Petitioner's FY18 FOS shall be removed.

The Board noted that Petitioner's FITREP at enclosure (4) has already been modified, as requested, by the PERB and no further modification by this Board is necessary. The Board was

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
USMC

XXX XX [REDACTED]

not willing to modify Petitioner's FITREP at enclosure (3) beyond that which was already modified by the PERB. In this regard, the Board significantly concurred with the AO provided in enclosure (5).

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by removing the FOS incurred by the FY18 USMC Lieutenant Colonel Promotion Selection Board.

Petitioner's 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.

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.

No Further relief be granted.

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.

[REDACTED]
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.

[REDACTED]
Executive Director