



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

[REDACTED]
Docket No. 10339-24
Ref: Signature Date

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) MCO 1610.7B, Performance Evaluation System (PES), 5 January 2023
(b) 10 U.S.C. § 1552
(c) 10 U.S.C. § 632
(d) SECNAVINST 5420.193, Board for Correction of Naval Records, 19 November 1997

Encl: (1) DD Form 149 w/attachments
(2) History of Lineal Establishment
(3) NAVMC 10835A, USMC Fitness Report (1610), FITREP ID #1136232
(4) Master Brief Sheet, 7 February 2024
(5) NAVMC 10835A, USMC Fitness Report (1610), FITREP ID #1239073
(6) ALNAV 077/24, subj: FY26 U.S. Marine Corps Lieutenant Colonel Selections, dtg 051359Z SEP 24
(7) [REDACTED], subj: Inaccuracy of Fitness Report ID #1239073 Attribute Markings, 1 February 2024
(8) [REDACTED], Performance Evaluation Section Comment on MMPB-21 routing sheet dated 7 Feb 24, subj: Performance Evaluation Review Board Advisory Opinion in case of [Petitioner], [REDACTED]
(9) [REDACTED], subj: Performance Evaluation Review Board (PERB) Decision in the case of [Petitioner], [REDACTED]

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, submitted enclosure (1) to the U.S. Marine Corps (USMC) Performance Evaluation Review Board (PERB) requesting that his fitness report (FITREP) for the reporting period 1 November 2010 to 30 April 2011 be corrected by adjusting the comparative assessment in Section K.3. from a marking of "5" ("One of the Many Highly Qualified Professionals Who Form the Majority of this Grade") to a marking of "6" ("One of the Few Exceptionally Qualified Marines").¹ When the PERB disapproved this request, enclosure (1) was forwarded to the Board for Correction of Naval Records, hereinafter referred to as the Board, in accordance with reference (a) for final review and determination pursuant to reference (b).

¹ Petitioner also requested that his previous failures of selection for promotion be removed from his record if the requested correction to the subject FITREP is made.

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2. The Board reviewed Petitioner's allegations of error or injustice on 12 November 2024 and, pursuant to its governing policies and procedures, determined that no corrective action should be taken on Petitioner's naval record. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval records; and applicable statutes, regulations, and policies.

3. Factual Background. Following are the relevant facts of Petitioner's case based upon review of his naval record and the material that he provided.

a. Petitioner was promoted to First Lieutenant effective 23 May 2010. See enclosure (2).

b. On 4 December 2010, Petitioner's Reviewing Officer (RO) signed Petitioner's FITREP for the reporting period 1 May 2010 to 31 October 2010.² In the comparative assessment in Section K.3., the RO checked block "6," describing Petitioner as "One of the Few Exceptionally Qualified Marines." See enclosure (3).

c. On 3 June 2011, the same RO signed Petitioner's FITREP for the reporting period 1 November 2010 to 30 April 2011.³ This time, however, he checked block "5" in the comparative assessment in section K.3., thus describing Petitioner as "One of the Many Highly Qualified Professionals Who Form the Majority of this Grade." See enclosure (5).

d. Petitioner was subsequently selected for promotion in the zone for Captain and Major.⁴ See enclosure (2).

e. Petitioner was not selected for promotion by either the Fiscal Year (FY) 2025 USMC Lieutenant Colonel (LtCol) Promotion Selection Board (PSB) or the FY 2026 USMC LtCol PSB.⁵⁶ See enclosure (2).

4. Procedural Background.

a. On 5 February 2024, Petitioner submitted enclosure (1) to the PERB requesting that his comparative assessment block in Section K.3. of enclosure (5) be changed to match that which the RO had assigned in his previous FITREP. Specifically, he described the lower comparative assessment in Section K.3. as inaccurate and unjust, and noted that reference (a) provides that a Marine officer being assessed "in back-to-back reporting periods, and whose performance remains constant, should receive at least the same mark as was assigned to the prior report."⁷ His request was supported by a memorandum from the RO in question, who is currently

² The Reporting Senior (RS) assigned average markings of 4.0 on this FITREP. See enclosure (4).

³ The RS assigned the same *average* markings on this FITREP as he had on the previous FITREP referenced in paragraph 3b above.

⁴ Petitioner was promoted to Captain effective 1 August 2012, and to Major effective 1 July 2018.

⁵ Petitioner submitted his request to the PERB prior to the convening date of the FY 2026 USMC LtCol PSB.

⁶ In accordance with reference (c), a USMC Major who has failed of selection for promotion to the next higher grade for the second time must be discharged not later than the first day of the seventh calendar month beginning after the month in which the President approves the report of the board which considered him for the second time. The results of the FY 2026 USMC LtCol PSB were announced on 5 September 2024. See enclosure (6).

⁷ See paragraph 15c(4)(c) of Enclosure (2) to reference (a).

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a USMC general officer, stating that he had inadvertently lowered Petitioner's comparative assessment in Section K.3. of the subject FITREP in violation of reference (a), and requesting that the PERB correct this error. See enclosure (7).

b. By memorandum dated [REDACTED], the Headquarters, [REDACTED] provided an advisory opinion (AO) for the PERB, recommending that Petitioner's request be denied. Specifically, the AO noted that Petitioner's request exceeded the three-year timeframe for substantive corrections by the PERB in accordance with reference (a).⁸ It also noted that the same RO had provided Petitioner with a comparative assessment mark of "5" in each of the two previous FITREPs before giving him a mark of "6" in December 2010, and that Petitioner had been promoted twice after issuance of the FITREP in question. See enclosure (8).

c. On 26 August 2024, the PERB determined that Petitioner did not demonstrate probable material error, substantive inaccuracy, or injustice warranting removal of the subject FITREP and directed that it remain as filed. See enclosure (9).

d. By memorandum dated 11 September 2024, Petitioner was notified of the PERB's decision referenced in paragraph 4c above, provided a copy of the AO referenced in paragraph 4b above, and advised that any comment on the outcome of the PERB should be submitted directly to the Board within 30 days. See enclosure (9).

5. Conclusion. Upon careful review and consideration of all the evidence of record, the Board found insufficient evidence of any error or injustice warranting relief.

a. While the Board acknowledged that reference (a) provides that a Marine officer whose performance remains constant over the course of back-to-back rating period should generally receive the same comparative assessment mark as was assigned in the previous FITREP, Petitioner did not prove that his performance remained constant. That cannot be presumed by the identical mark *averages* assigned by the RS in each FITREP. The RO did not make this claim in enclosure (7), and his comments in enclosure (5) were clearly less laudatory than those he provided in enclosure (3).⁹ The actual ratings assigned by the RS also do not support the conclusion that Petitioner's performance remained constant between these two rating periods, as the mark assigned by the RS in Section D.1. for "Performance" was lower in enclosure (5) (i.e., "D") than it was in enclosure (3) (i.e., "E"). While his overall mark average remained the constant, his performance rating did not.¹⁰ The Board makes no conclusions regarding the quality of Petitioner's performance from 1 November 2010 to 30 April 2011 relative to its quality from 1 May 2010 to 31 October 2010, as that is not its role, but rather merely found that

⁸ Per paragraph 3c(2) of Chapter 10 of reference (a), "appeals should be filed within three years of the discovery date of the purportedly inaccurate or unjust document."

⁹ In enclosure (3), the RO described Petitioner as "the top platoon commander in [REDACTED] and a standout in the battalion." By comparison, the same RO described him as "[a] strong willed, intelligent and hard working officer" in enclosure (5). Anyone familiar with Marine Corps officer FITREPs would recognize the message conveyed in the latter description as being far less laudatory than that conveyed by the former.

¹⁰ In addition to a lower mark for "Performance," the RS also assigned a lower mark in Section F.5. for "Communication Skills." These relatively lesser marks were offset by higher marks in Section E.1. for "Courage" and Section F.4. for "Ensuring Well-Being of Subordinates."

Petitioner did not prove his performance remained constant over these two periods and that there is significant evidence suggesting that it did not.

b. The Board also noted that the comparative assessment that Petitioner complains about was consistent with the other assessments that he received throughout his service as a lieutenant. Of the six comparative assessment marks received by Petitioner as a lieutenant, four were the same as that which he now complains of. The prior comparative assessment stood as the lone "6" he received, while he later received a "4" from a different RO. Notably, Petitioner received a comparative assessment of "5" in the FITREP which preceded the anomalous rating of "6" reflected in enclosure (3) from the same RO, despite that fact that his RS mark average actually decreased. These facts suggested that the "6" block assigned in enclosure (3) was the anomaly, and that Petitioner may have benefitted from an overly generous comparative assessment rather than suffered from an improperly diminished assessment.

c. Even assuming, *arguendo*, that there was some error in the lesser comparative assessment assigned in enclosure (5) relative to that assigned in enclosure (3), the Board would have found such error to be clearly harmless. Petitioner was selected for promotion to both Captain and Major in the zone despite the presence of the offending FITREP and declining comparative assessment in his record. One declining comparative assessment as a First Lieutenant was not likely the reason for his failures of selection by the FY 2025 and FY 2026 USMC LtCol PSBs more than a decade later.

d. The Board notes that substantive corrections to the assessment of a Marine Corps officer's conduct or performance in a FITREP must be "based entirely on facts about the Marine that were unknown when the original report was prepared (emphasis not added)."¹¹ Reference (a) describes all other corrections as "inherently judgmental, including supposed errors in attribute markings and comparative assessment markings."¹² Petitioner provided no facts about himself that were unknown when enclosure (5) was prepared. While the Board does not consider its authority to change naval records to correct errors or remove injustices pursuant to reference (b) to be constrained by these provisions of reference (a), it agreed with the sentiment in this case. Petitioner simply provided no basis upon which to make the correction that he requests.

e. Finally, the Board did not find the correspondence from the RO to be persuasive. As noted above, he did not affirmatively state that Petitioner's performance remained constant over the two rating periods. As discussed in paragraph 5a above, the evidence suggests that it was not. The Board found it highly unlikely that the RO recalled Petitioner's performance over these two rating periods from so long ago to make such an assessment; it is likely that he knew only that Petitioner received the same rating average from his RS over these two rating periods. Additionally, the Board was not impressed with the RO's acknowledgment of the impact that this correction would have upon other Marines that he observed of the same grade. To the contrary, the Board found that granting the relief requested by Petitioner and recommended by the RO would be inherently unjust to those Marines, and that that injustice would far outweigh any that Petitioner can legitimately claim in a FITREP from so long ago.

¹¹ See paragraph 10b(2) of Chapter 8 of reference (a). See also paragraph 1b of Chapter 10 of reference (a).

¹² See paragraph 10b(1) of Chapter 8 of reference (a).

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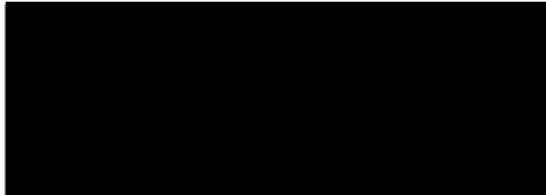
f. Having found insufficient basis to change Petitioner's comparative assessment mark in Section K.3. of enclosure (5), the Board also found insufficient basis to remove Petitioner's failures of selection for promotion to LtCol.

6. Recommendation. In view of the above, the Board recommends that no corrective action be taken on Petitioner's naval record.

7. 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 titled matter.

8. The foregoing action of the Board is submitted for your review and action in accordance with Section 6e(2)(c) of Enclosure (1) to reference (d).

12/6/2024



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ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS)
DECISION:

[REDACTED] Board Recommendation Approved (Deny Relief – I concur with the Board's conclusion and therefore direct that no corrective action be taken on Petitioner's naval record.)

- Petitioner's Request Partially Approved (Partial Relief – I disagree with the Board's conclusion. Specifically, I find that the RO's memorandum at enclosure (7) sufficient to establish the existence of an error in Petitioner's FITREP. However, I found no evidence or reason to believe that this discrepancy from so long ago had any bearing upon Petitioner's failures of selection for promotion to LtCol. Accordingly, I direct only that FITREP #1239073 be corrected to reflect that his comparative assessment in Section K.3. was marked as "6" (with corresponding corrections to Petitioner's Master Brief Sheet). No action shall be taken to remove Petitioner's failures of selection.)
- Petitioner's Request Approved (Grant Relief – I disagree with the Board's conclusion. Specifically, I find that the RO's memorandum at enclosure (7) sufficient to establish the existence of an error in Petitioner's FITREP. Accordingly, I direct that FITREP #1239073 be corrected to reflect that his comparative assessment in Section K.3. was marked as "6" (with corresponding corrections to Petitioner's Master Brief Sheet) and that his failures of selection for promotion to LtCol be removed from his record.)

[REDACTED]

Date: 23 April 2025