



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 1372-99
23 April 1999

MAJ [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Major [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of your fitness report for 29 June 1994 to 15 March 1995.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 April 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 24 February 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

Regarding your contested adverse fitness report for 16 February to 15 March 1993, the Board noted that this report need not be consistent with earlier and later reports. They were unable to find that your reporting senior (RS) did not counsel you about perceived deficiencies. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided.

Concerning your contested adverse fitness report for 1 July to 29 November 1995, the Board found that the determination, in the board of flight surgeons report of 29 November 1995

(exhibit 10 to your application), that you could resume flying status did not refute your RS's nonmedical opinion that you "...should not be returned to the cockpit of an aircraft." They were not convinced that he lacked the experience or basis to express his opinion. Contrary to the PERB report, they found that you did provide some documentary evidence that your RS's attitude toward you was other than professional, specifically, the statement in the report of the board of flight surgeons that "It seems as though there is a definite [sic] personality conflict with his last executive officer..." However, the Board was unable to find the board of flight surgeons had a reliable basis for this statement. Finally, your RS's comment that you are "Believed to hold latent intelligence..." did not persuade them that he was biased against you, although they did not particularly approve of his choice of language. They felt that removing this language would not be a material correction in an otherwise adverse fitness report.

In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
FEB 24 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
~~██~~ USMC

Ref: (a) Major ~~████████████████████~~'s DD Form 149 of 27 Nov 98
(b) MCO P1610.7C w/Ch 1-6
(c) MCO P1610.7D

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 19 February 1999 to consider Major ~~████████████████████~~'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 930216 to 930513 (CH) -- Reference (b) applies
- b. Report B - 940629 to 950315 (TR) -- Reference (b) applies
- c. Report C - 950701 to 951129 (TR) -- Reference (c) applies

2. The petitioner contends that all three of the challenged reports are erroneous and unjust and that each was entered into his official record without regard for the provisions of references (b) and (c). Concerning Report A, the petitioner states that throughout the reporting period, he perceived his performance was at his "usual high level" and was never provided any counsel by the Reporting Senior as to deficient performance. He also claims that a severe head injury (suffered during May 1993) precluded a timely rebuttal to Report A. Although he believed at the time that he had recovered full use of his faculties and formulated a viable rebuttal, the petitioner now realizes that was not the case. In addition to the foregoing, the petitioner believes that the report may be in violation of certain provisions of reference (b). With regard to Report B, the petitioner challenges the reporting officials' familiarity with the Marine Corps performance evaluation system, and believes their lack of understanding contributed to the adversity of the report. The petitioner further disclaims any counseling on noted deficiencies in skills, attitude, knowledge, duties, or leadership traits. As for Report C, the petitioner again disclaims any counsel on shortcomings in his performance, and indicates that Lieutenant Colonel ~~████████████████████~~ never notified him that he was to be the Reporting Senior. The petitioner states that during the period covered he continually worked in "daily close

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contact" with and took direction from Lieutenant Colonel [REDACTED] (the Regimental Operations Officer). He also points out that the Regimental Operations Officer had functioned as his Reporting Senior for the fitness report immediately prior to Report C, so he had no reason to believe that relationship would change. In addition to challenging Report C based on perceived violations of reference (c), the petitioner also believes the report reflects more of Lieutenant Colonel [REDACTED]'s bias against him than actual performance. To support his appeal, the petitioner furnishes 15 attachments consisting of medical documentation, copies of the challenged reports, and other data which he believes to be pertinent.

3. In its proceedings, the PERB concluded that:

a. Report A is both administratively correct and procedurally complete as written and filed. Notwithstanding the petitioner's argument to the contrary, the Board believes that his rebuttal statement is cogent and addresses the facts with particular attention to detail.

(1) The petitioner's contention that he performed at his usual high level during the period covered by Report A is his unsubstantiated opinion, and one that was not shared by the reporting officials. In his review, Colonel [REDACTED] adjudicated the Reporting Senior's evaluation and the petitioner's expressed differences. The Board notes that Colonel [REDACTED] did confirm, and the petitioner acknowledged that confirmation in reference (a), that Lieutenant Colonel [REDACTED] was correct in assessing the petitioner's tendency to obsess with details and lose focus of the mission.

(2) Contrary to the petitioner's contention, Report A is not reflective of accomplishing "all assigned missions." Simply because the Reporting Senior marked Item 16 as "Particularly Desire", there is no contradiction between other Section B grades and Section C comments. That Lieutenant Colonel [REDACTED] would particularly want the petitioner on his team in the future did not negate the fact that he was not sufficiently focused during the period covered by Report A. The Board opines that for a field grade staff officer, a lack of focus is not a "minor limitation"; it is adverse.

(3) While Report A is for a relatively brief period, it documents performance in a fast-paced operational flying squadron. In addition, Lieutenant Colonel [REDACTED] was the

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petitioner's Reporting Senior for the prior three month report, and was the Reviewing Officer on two other previous reports for periods of eight months. He was aware of the petitioner's capabilities and potential.

b. The removal of Report B is warranted and has been directed.

c. Report C is both administratively correct and procedurally complete as written and filed. We offer the following:

(1) The petitioner's contention that Lieutenant Colonel [REDACTED] should have been his Reporting Senior is unfounded and was specifically addressed by Colonel [REDACTED] when he reviewed the report. Likewise, the petitioner's disclaimer to counseling is also specifically addressed by Colonel [REDACTED]

(2) While the petitioner's request for an humanitarian transfer may have been the catalyst for his relief, Report C indicates that a "relief for cause" from his billet was imminent. Given the seriousness of such a situation, coupled with the petitioner's quick departure, the untimely handling of Report C is understandable and does not violate the overall spirit and intent of reference (c).

(3) The Reviewing Officer did a very thorough point-for-point adjudication of the evaluation and the differences expressed in the petitioner's rebuttal. In his review, Colonel [REDACTED] provided an important and informative chronology which places the entire situation into its proper perspective.

(4) Exhibits 3 and 4 to reference (a) are not proof that Lieutenant Colonel Kopf harbored any bias. In fact, nothing offered in reference (a) documents that the Reporting Senior authored or released the endorsement and message at the exhibits. The petitioner offers no substantiated documentation or corroborating statements that the Reporting Senior's attitude toward him was anything other than professional. Exhibit 12 to reference (a) is a personal note from the Reporting Senior to a colleague and his use of the word "antics" in addressing the petitioner's failure to sign Items 22 and 24 of Report C prior to his departure from Hawaii is certainly not indicative of an undue bias.

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(5) Contrary to the petitioner's contention that what he offers as medical evidence confirms that he could not function in his regular duties is determined to be without merit. The medical notes and analyses from medical examinations were for purposes of determining his flying status; however, they stated he was fit for general duties. They were not an attempt to address his billet performance problems and the deficiencies recorded in Report C. Likewise, those notes do not prove a "cause and effect" regarding the performance evaluations and his previous medical problems.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Reports A and C should remain a part of Major [REDACTED]'s official military record.

5. The case is forwarded for final action.



Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps