



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 5613-98
11 August 1999

MAJ [REDACTED] USMC RET
[REDACTED]
[REDACTED]

Dear Major [REDACTED]:

By order filed 20 July 1998, Number 97-499C, the United States Court of Federal Claims has directed reconsideration of your previous case before this Board, docket number 361-98, which was denied on 18 June 1998. The court required that the Board "...perform a comparative review of [your] military record against the sample cases of selected contemporaries retained by the FY [Fiscal Year] 1996 and FY 1997 Lieutenant Colonel Selection Boards."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 11 August 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 the court's order, the Board's files on your prior cases (docket numbers 6848-95 and 361-98), your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion from the Headquarters Marine Corps Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 10 August 1998, a copy of which is attached, and the Master Brief Sheets, provided by MMOA-4, of officers considered by the FY 1996 and 1997 Lieutenant Colonel Selection Boards (five selectees and five nonselectees from each promotion board). They also considered your counsel's electronic mail transmission dated 6 August 1999, stating that he had nothing further to submit.

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.

Particularly in light of the comments contained in the advisory opinion from MMOA-4 and the Master Brief Sheets provided, the Board found it unlikely that you would have been selected by either the FY 1996 or FY 1997 promotion selection board, had the two removed fitness reports been removed before the promotion boards considered you.

Since the Board found your FY 1996 and 1997 failures should stand, and they further found that the fitness reports at issue were removed before the FY 1998 selection board convened in November 1996, they had no basis to remove your FY 1998 failure.

As the Board found insufficient grounds to strike any of your failures of selection to lieutenant colonel, they had no basis to recommend your consideration by a special selection board or to set aside your involuntary retirement on 1 June 1997.

In view of the above, the Board again voted to deny relief. 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

Copy to:
Charles W. Gittins, Esq.

5613-98



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1600
MMA-4
10 Aug 98

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

Subj: BCNR PETITION FOR MAJOR [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
Major [REDACTED] USMC
of 29 Jul 98

1. In our opinion, the original MMA-4 Advisory Opinion remains valid.
2. Per the reference, we reviewed Major [REDACTED]'s record for a third time. His record was compared to the selectees and non-selects retained from the FY96 and FY97 USMC Lieutenant Colonel Selection Boards.
3. In our opinion, even with the petitioned reports expunged from the record prior to the FY96 and FY97 boards, Major [REDACTED] record is not competitive with the sampling of records. The records of those selectees retained were clearly superior to Major [REDACTED]'s record while the records of a majority of non-selects were of superior quality. Specifically, his performance as a major was clearly below that of all the records reviewed by this office.
4. In summary, after a review of the selectees and non-selects retained by the FY96 and FY97 boards, we believe that Major [REDACTED] record would not have been selected even with the *contested fitness reports removed* from the record. Therefore, we believe our original MMA-4 Advisory Opinion remains valid.

[REDACTED]

Colonel, U. S. Marine Corps
Officer Assignment Branch
Personnel Management Division