



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 2618-98

28 May 1999

1STL [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Lieuten [REDACTED]

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

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 May 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 (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 19 April 1999, and the advisory opinion from the HQMC Officer Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 21 May 1999, copies of which are attached. They also considered your rebuttal letter dated 11 May 1999 with enclosures.

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.

The Board substantially concurred with the comments contained in the report of the PERB in finding that your contested adverse fitness report should not be removed. They were unable to find that your reviewing officer had inadequate observation of your performance to do his job properly, noting that he indicated he had "sufficient" opportunity to observe, and further noting that observation need not be direct. If your reporting senior is incorrect in stating that two previous reporting seniors counseled you about being too familiar with junior enlisted Marines, the Board found that this would not be a material matter warranting correction of an overall adverse fitness report. Finally, they were unable to find that your reporting senior did not know how much effort you expended bringing your area of responsibility to an acceptable level, or that he did not take due account of your inexperience as a cause of your mistakes.

Since the Board found no material defect in your performance record, they had no basis to remove your failures by the Fiscal Year 1999 and 2000 Captain Selection Boards.

In view of the above, your application 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

Enclosures



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

2618-98

IN REPLY REFER TO:
1610
MMER/PERB
APR 19 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 FIRST
LIEUTENANT [REDACTED] USMC

Ref: (a) 1stLt. [REDACTED] DD Form 149 of 22 Dec 98
(b) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 April 1999 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970601 to 970731 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the report is unjust due to command influence, and in error because it references events that occurred outside the reporting period. Additionally, he charges that the command did not adhere to the guidelines established in reference (a) regarding the assignment of the Reviewing Officer. To support his allegations, the petitioner furnishes statements from Major [REDACTED] and Captain [REDACTED], and provides NBC inspection results. NOTE: Although a statement from Captain [REDACTED] is listed in Block 10 of reference (a), no such document either accompanied the submission of the petitioner's application, nor was it received separately.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner's disagreements, surfaced in his official rebuttal, were properly adjudicated by the Reviewing Officer. Lieutenant Colonel [REDACTED]'s comments were also acknowledged by the petitioner; however, he indicated he had no further comment. The entire report was third sighted by a General Officer and correctly incorporated into the petitioner's official military personnel file.

b. The following specific findings pertain:

(1) The petitioner's claim that he signed five versions of the report is unfounded. Regardless, the report under

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consideration is the official report of record and the one to which the petitioner responded.

(2) The petitioner's claim that Captain [REDACTED] informed him he had no intention of writing a report as severe as the one at issue has no corroboration. A simple statement to that effect from Captain [REDACTED] is conspicuously absent.

(3) The Board finds it interesting that the petitioner's argument that his familiarization with the softball players occurred outside the reporting period (and, therefore, inappropriately recorded) was not surfaced when he officially responded to the report. Even when Lieutenant Colonel [REDACTED] commented further on that same issue, the petitioner surfaced no challenge. There is no substantiation as to when the petitioner stepped down as coach and player, or when he discontinued his association with the players.

(4) The mention of the petitioner's problems as "alcohol-related" was not in violation of reference (b). The Reviewing Officer directed the petitioner to be screened by a SACO -- it was not voluntary, and the petitioner did not deny his familiarization with the softball team members during gatherings that involved alcohol consumption.

(5) The mention of prior counseling by either of the reporting officials was not improper, since it established a pattern culminating in the challenged report. The Reviewing Officer said that he personally conducted formal counseling concerning the petitioner's drinking and improper socializing. When acknowledging the Reviewing Officer's comments, the petitioner did not challenge the truth or accuracy of that statement.

(6) In neither his rebuttal to the Reporting Senior's evaluation, nor in his acknowledgment of Lieutenant Colonel [REDACTED] review, did the petitioner claim that Lieutenant Colonel [REDACTED] was not his correct Reviewing Officer. Likewise, no substantiation to that argument is found in reference (a).

(7) Major [REDACTED]'s advocacy letter of 23 November 1998 claims he was not aware that the petitioner "was involved in any liberty incidents during the deployment (to Korea)." That statement is simply not germane, since the report is not the subject of any liberty incident. There were no adverse reports

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from outside the command (Item 17b) or disciplinary action (Item 17c). Paragraph three of Major [REDACTED]'s letter certainly infers that he had previously counseled the petitioner on the problems delineated in the report.

(8) In his rebuttal, the petitioner clearly acknowledged that he was aware of the situation with the NBC account. He also admitted that had he read the prior inspection results, he could have corrected those problems. The Board believes that Captain [REDACTED] advocacy letter is not an excuse for the petitioner's deficiencies in this area.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First Lieutenant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

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



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

2615-98

IN REPLY REFER TO:

1600
MMA-4
21 May 99

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

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED] SMC

Ref: (a) MMR Request for Advisory Opinion in the case of
First Lieutenant [REDACTED] MC of [REDACTED]

1. Recommend disapproval of First Lieutenant [REDACTED] implied request for removal of his failures of selection.
2. Per the reference, we reviewed First Lieutenant [REDACTED] record and petition. He failed selection on the FY99 and FY00 USMC Captain Selection Boards. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Change of Duties fitness report of 970601 to 970731. First Lieutenant [REDACTED] implies a request to remove his failure of selection.
3. In our opinion, the petitioned report provides substantial competitive concern to the record and more than likely led to First Lieutenant [REDACTED] failure of selection. Therefore, we recommend disapproval of First Lieutenant [REDACTED] implied request for removal of his failures of selection.
4. Point of contact is Lieutenant Colonel [REDACTED] at [REDACTED].



Lieutenant Colonel, U. S. Marine Corps
Head, Officer Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division