



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

BJG
Docket No: 7639-98
14 May 1999

MAJ [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear [REDACTED]:

This is in reference to your application dated 29 September 1998, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552. In your previous case, docket number 7829-97, your original request to remove your fitness report for 1 November 1987 to 10 November 1988 was denied on 12 November 1997. In your current case, you have added a request to remove your failures by the Fiscal Year (FY) 1999 and 2000 Lieutenant Colonel Selection Boards.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 13 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 current application, together with all material submitted in support thereof, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the memorandum from the Headquarters Marine Corps (HQMC) Performance Evaluation Review Branch (MMER/PERB), dated 8 October 1998, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 4 January 1999, copies of which are attached. They also considered your counsel's rebuttal letters dated 18 February and 10 May 1999.

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 new statements at enclosures (2) through (4) of your current application, among these a statement from the reviewing officer who acted on your fitness report at issue, did not persuade them that this report should be removed. The reporting senior's statement at enclosure (1), considered in your prior case and concurred with by the reviewing officer, remained unconvincing. In this regard, the Board particularly noted that the contested report

is a "TR" (transfer) report, and the reporting senior states "...[you] received a transfer report on a date different than [sic] the officers [he] was attempting to 'break out'..." Therefore, they could not accept the reporting senior's assertion that he marked you below three of your peers in "general value to the service" (marking them "OS [outstanding]," the highest, while marking you and two others "EX [excellent]" to "OS," the second highest), in order to enhance the promotion opportunity of those three. Further, they noted that he never indicated any alternative evaluation he considered more appropriate for you than the one he provided. They found the reporting senior's comment, in the narrative of the contested report, that you were "Hard-nosed" did not render the report "adverse." Finally, they found no inconsistency between the marks and comments of the report.

Since the Board found no defect in your performance record, they had no basis to remove your failures by the FY 1999 and 2000 Lieutenant Colonel Selection Boards.

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

Enclosures

Copy to:
Joseph C. Munch, Esq.

7639-98



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

IN REPLY REFER TO:
1610
MMER/PERB
8 Oct 98

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

Subj: REQUEST FOR RECONSIDERATION IN THE CASE OF MAJOR [REDACTED]
[REDACTED] USMC

Encl: (1) Major [REDACTED]'s DD Form 149 of 29 Sep 98

1. Both the PERB and BCNR previously denied Major [REDACTED] request for the removal from his official military record of the fitness report for the period 871101 to 881110 (TR). Your 07829-97 applies.

2. Major [REDACTED] is again asking for elimination of the fitness report identified above and has provided what he believes to be relevant material evidence. We emphasize that two of the documents furnished in the enclosure were part of Major [REDACTED]'s original application (i.e., the letters from Colonel [REDACTED] and [REDACTED]). The advocacy statement from Brigadier General [REDACTED] (USMC, Retired), who concurred in the challenged evaluation, merely offers the advantage of ten years worth of hindsight. The letters from Colonel [REDACTED] and Lieutenant Colonel [REDACTED] while arguably "new", do nothing more than offer their support for the statements made by Colonel [REDACTED] and Major [REDACTED].

3. Although it has been inferred that the fitness report at issue was the cause for Major [REDACTED]'s failing of selection for promotion to the grade of Lieutenant Colonel, we stress that such a situation does not constitute grounds for removing a fitness report. To operate under such a policy would breach the integrity and viability of the entire Performance Evaluation System.

4. We recommend against accepting the enclosure for reconsideration. Please advise.

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
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

IN REPLY REFER TO:
1600
MMA-4
04 Jan 99

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 23 Dec 98
(b) MMA-4 MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD
FOR CORRECTION OF NAVAL RECORDS of 10 Nov 97

1. Recommend disapproval of Major [REDACTED] request for removal
of his failure of selection.

2. Per the reference (a), we reviewed Major [REDACTED] record,
his petition, and reference (b). Major [REDACTED] failed selection
on the FY99 USMC Lieutenant Colonel Selection Board.
Subsequently, Major [REDACTED] unsuccessfully petitioned the
Performance Evaluation Review Board for removal from the record
of the fitness report for the period 871101 to 881110. Major
[REDACTED] requests removal of his failure of selection.

3. In our opinion, the petitioned fitness report does present
jeopardy to the competitiveness of the record. The report
indicates that Captain [REDACTED] performance had declined from
the previous reporting period while in a critical billet for his
rank and Military Occupational Specialty. It contains less
competitive Section B marks in Cooperation, Personal Relations,
and General Value to the Service.

4. However, we believe other areas of competitive concern
contributed to his failure of selection.

a. **Section B marks.** Major [REDACTED]'s record contains trends
of less competitive Section B marks in Regular Duties,
Administrative Duties, Handling Officers, Handling Enlisted
Personnel, Judgement, Force, Leadership, Personal Relations,
Economy of Management, and General Value to the Service. We note
the trend in Force continues into his current rank.

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

b. **Value and Distribution as a major.** Major [REDACTED] as eleven officers ranked above him and sixteen below in his current rank.

5. In summary, we believe the petitioned report *does* present jeopardy to the competitiveness of the record. However, we believe other areas of competitive concern contributed to his failure of selection. Therefore, we recommend disapproval of Major [REDACTED] request for removal of his failure of selection.

[REDACTED]

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