



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

BJG
Docket No: 2315-99
6 May 1999

SSGT [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 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 Performance Evaluation Review Board (PERB), dated 5 April 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 1 February to 5 April 1995, the Board noted that it does not state you were reassigned twice during the reporting period, rather, that you were reassigned twice during "this tour." They found nothing objectionable about the reporting senior's having expressed a similar opinion of you as reviewing officer on your fitness report for 1 March to 31 December 1994. They were unable to find that the report at issue was based on conjecture. Finally, they were unable to find that the reviewing officer was incorrect in stating that your delay in responding to the report was a factor in its lateness.

Concerning your adverse fitness report for 1 January to 17 April 1998, the Board was unable to find that you had a personality conflict with the reporting senior. They noted that in any event, a subordinate has an obligation to get along with his superiors. They were likewise unable to find that the report in question was used as a disciplinary tool or counseling

document. They found that the reviewing officer added no new adverse information requiring referral to you. Finally, they found the reporting senior's concurrence, as reviewing officer, with your favorable fitness report for 3 December 1996 to 30 September 1997 did not invalidate the contested report.

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

Enclosure

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

respond to the comments made by **BOTH** the Reporting Senior and Reviewing Officer (evidence his signed statement on the Standard Addendum Page dated 29 Jan 1996). For whatever reason(s) he chose to relinquish that right, it is he who must now bear the ultimate responsibility. Captain [REDACTED] statement, although seemingly supportive, does nothing to counter the accuracy or fairness of Report A. The Board believes that the issues which the petitioner now surfaces in reference (a) should have been raised when he had the opportunity to do so via the appropriate forum. In this regard, we stress that the appeal system established by reference (a) **IS NOT** a substitute for proper resolution of an adverse fitness report at the time it is written.

b. Contrary to what the petitioner may believe, there is no requirement in references (c), (d), or (e) which mandate that official counseling entries must be made in a Marine's SRB in order to justify receipt of an adverse fitness report. The requirement to conduct counseling is a continuing process and allows a Marine the opportunity to correct any identified discrepancies or deficiencies. As evidenced by the Reviewing Officer's comments appended to Report B, the Reporting Senior met this requirement and was well within his purview to render the evaluation as he saw fit.

c. The disagreements concerning Report B which the petitioner narrates in reference (a) are the same basic arguments he levied when he initially responded to the report almost a year ago. In his review and adjudication of the report, Major [REDACTED] laid to rest any question that the report was not an honest, accurate, and objective evaluation of the petitioner's demonstrated performance during the stated period. The voluminous documentation submitted as substantiation simply does not counter that conclusion.

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

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5. The case is forwarded for final action.

[REDACTED]

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps