



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

SMC  
Docket No: 03892-99  
3 September 1999

SGT [REDACTED] MC  
[REDACTED]  
[REDACTED]

Dear Sergeant [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 2 September 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 11 June 1999, a copy of which is attached, and your Standard Addendum Page (SAP) dated 7 July 1999 with attachments.

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. The Board was unable to find the reviewing officer erred by indicating he had sufficient opportunity to observe your performance, noting observation need not be direct. They noted you still have not submitted a proper rebuttal for file in your record with the contested fitness report, as you have included attachments with your SAP, rather than incorporating their content on the SAP. 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



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

IN REPLY REFER TO:  
1610  
MMER/PERB  
JUN 11 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  
SERGEANT [REDACTED] USMC

Ref: (a) Sgt [REDACTED] DD Form 149 of 7 Apr 99  
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 8 June 1999 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990109 to 990315 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is both inaccurate and unjust. To support his appeal, the petitioner furnishes his own statement in which he disagrees with the factual accuracy of the report, and provides copies of his Leave and Earning Statement (LES), a statement concerning an account status, and a refund/liability statement from his previous apartment complex.

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. When the petitioner acknowledged the adversity of the fitness report (evidence his signature in Block 2 of Section J), he opted to omit any statement in his own behalf. In so doing, he passively concurred in the accuracy of the evaluation without presenting matters in extenuation and mitigation of the recorded information. It is the PERB's position that the issues which the petitioner now surfaces in reference (a) should have been raised at the time he acknowledged the report and when all parties were collocated and available to resolve any factual differences. In this regard, we invite attention to the provisions of paragraph 5008.3 of reference (b), which state: "The appeal process is not a substitution for an attempt at proper resolution of an adverse report during its preparation and review."

b. Given the extreme recency of the report at issue (less than three months), the PERB has afforded the petitioner an opportunity to now append a statement of rebuttal and have the issues adjudicated by the proper reviewing authorities. Absent

(3) PERB

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SERGEANT [REDACTED], [REDACTED] USMC

the petitioner's acceptance of that offer, and notwithstanding the documentation furnished with reference (a), the Board must conclude that the report is neither in error nor unjust.

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

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