



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

BJG  
Docket No: 8366-02  
20 November 2002

SSGT [REDACTED] USMC  
[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 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed modification of your fitness report for 18 April to 1 September 1998 by removing the last two sentences from the reviewing officer's comments.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 November 2002. 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 23 September 2002, 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.

The Board substantially concurred with the comments contained in the report of the PERB in concluding that no further relief, regarding the contested fitness report, is warranted. Although your rebuttal to the fitness report at issue did introduce specific information as to the nature of your personal problems, they found this did not require comment from the third sighting officer; the reviewing officer (RO) had addressed this matter by noting you had "some personal issues going on." They found your rebuttal served the purpose of identifying these issues, whereas the RO had spoken of them in only general terms. The light duty chit you provided did not persuade them that there was anything improper about the RO's statement that you "failed to go to extra study sessions." Finally, they noted that the fitness

report in question does not indicate, as does the Student Academic Performance Sheet you provided, that you were counseled for unauthorized absence.

The Board found you should not receive remedial consideration for promotion from the Calendar Year (CY) 1999 Staff Sergeant Selection Board. They found it definitely unlikely that the limited relief CMC directed would have appreciably improved your chances before this promotion board. In this regard, they noted that the contested fitness report, as modified by the CMC action, is still adverse; and that the CY 2001 promotion board selected you with the uncorrected report.

In view of the above, your application for relief beyond that effected by CMC 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  
SEP 23 2002

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 STAFF  
SERGEANT [REDACTED] USMC

Ref: (a) SSgt [REDACTED] DD Form 149 of 13 Jun 02  
(b) MCO P1610.7D w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 September 2002 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980418 to 980901 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is incorrect in three areas. First, he believes Item 17b should have been marked "yes" since the report is adverse. Second, he infers that receipt of an adverse fitness report is inconsistent with a mark of "yes" in Item 19. Finally, the petitioner believes that since comments in a fitness report should be factual and void of opinion, a specific statement by the Reviewing officer is inappropriate. As an additional item, the petitioner observes there was no third officer sighting/action. To support his appeal, the petitioner furnishes his own detailed statement.

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

a. The petitioner is incorrect in his interpretation of the criteria for marking Item 17 on the fitness report form. That block is marked "yes" only when the Marine reported on has been the subject of adverse material from outside the reporting chain. It is not marked "yes" simply because the report itself is adverse. In this case, Item 17b was correctly marked "no."

b. There is no inconsistency or contradiction in the Reporting Senior recommending the petitioner for promotion.

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Obviously, despite the difficulties experienced by the petitioner during his course of instruction, the Reporting Senior believed he possessed potential for advancement.

c. Contrary to the petitioner's belief, Third Officer Sighting was conducted [REDACTED]. No commentary was provided, hence there was no requirement for the petitioner to either sight or acknowledge that review.

d. The Board agrees with the petitioner concerning his challenge to the Reviewing Officer's comments. They do not, however, conclude that removal of the entire report is necessary. Instead, elimination of the following verbiage has been directed: "His record indicates that he would not be able to pass this highly technical course regardless of circumstances, even though he possesses the entry level MOS prerequisite. He has therefore been academically dropped and, per HQMC guidance, assigned a less technical career progression MOS within the occupational field."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Staff Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3d is considered sufficient.

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