



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

BJG
Docket No: 6158-98
22 April 1999

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, United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has processed your contested fitness report for 1 January to 31 December 1996 as an adverse report.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 April 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 19 August 1998 with enclosure, a copy of which is attached. They also considered your rebuttal letter dated 22 November 1998 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. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Notwithstanding your letter dated 22 November 1998 and its enclosures, they were not persuaded that your reporting senior placed undue emphasis on your personal problems in marking you down in items 14g, "judgment," and 14l, "personal relations" of the contested fitness report. In this regard, they noted your reporting senior's comments included no mention of such problems. 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
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

6158-98

IN REPLY REFER TO:
1610
MMER/PERB
19 Aug 98

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 ██████████, ██████████ USMC

Ref: (a) SSgt ██████████ DD Form 149 of 10 Feb 98
(b) MCO P1610.7D w/Ch 1

Encl: (1) Completed Fitness Report 960101 to 961231 (AN)

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 7 April 1998 to consider Staff Sergeant ██████████ petition contained in reference (a). Removal of the fitness report for the period 960101 to 961201 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the marks in items 14g (judgment) and 14l (personal relations) were based solely on his family/personal problems. He also argues that the Reviewing Officer did not have sufficient time to comment on his personal relations.

3. In its proceedings, the PERB concluded that:

a. The petitioner's belief that the assigned marks of "excellent" in items 14g and 14l of Section B were based on family/personal problems is not grounded in documented fact. That presumption is viewed as nothing more than the petitioner's unsanctioned speculation.

b. The overall tenor, albeit brief, of the Reviewing Officer's comments leaves the reader to speculate as to the exact nature and scope of the petitioner's "personal relations" and should have entailed elaboration. Owing to the relative recency of the report at the time the PERB first considered reference (a) (less than two years), the Board found that referral of the report to the petitioner for his acknowledgement/rebuttal would be appropriate. That action has been completed, and the views of all parties are now equally represented in the record.

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

c. The Board notes that the Third Sighting Officer (Lieutenant Colonel ~~██████████~~ the Commanding Officer) has dispelled any perception that the report is either unfair or inaccurate. In fact, given the petitioner's history of family violence, coupled with his categorization as a Level III Spouse Abuser, the Board believes the Reporting Senior's evaluation was generous.

d. While Major ~~██████████~~ may not have been on-board when the incidents occurred, he was the Reviewing Officer at the time the report was prepared/submitted. Hence, his observations are well within the spirit and intent of reference (b). Simply stated, he reported factual matter relevant to and impacting on the petitioner's character/performance.

e. The petitioner's argument that the report violates paragraph 5001 of reference (b) (i.e., "flaws/mistakes") is simply incorrect. Domestic violence is not, as the petitioner implies, a minor flaw or mistake. It is a grievous situation which is contrary to "core values."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as reflected in the enclosure, should remain a part of Staff Sergeant ~~██████████~~ official military record.

5. The case is forwarded for final action.

~~██~~
~~██~~

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

6158-98

MARINE REPORTED ON				
b. Last Name		c. First Name		e. Grade
[REDACTED]		[REDACTED]		J SSGT

2. OCCASION AND PERIOD	3. DUTY ASSIGNMENT	
a. OCC AN	b. From 960101	c. To 961231 ADMIN CHIEF

4. PURPOSE

Continuation	Adverse Report	HQMC Use
<input type="checkbox"/> Section C	<input checked="" type="checkbox"/> MRO Statement	<input type="checkbox"/>
<input type="checkbox"/> RS Certification	<input type="checkbox"/> REVO Statement	
<input type="checkbox"/> REVO Certification		

5. TEXT

I have received a certified copy of the report identified in item 2.

- [REDACTED] have no statement to make.
- [REDACTED] make the following statement.

1. I have viewed Reviewing Officer's comments appended to my fitness report for the period 960101 to 961231 (AN) and desire to attach this statement of rebuttal. It is requested that the package enclosed be given thorough consideration, and that the Annual Fitness Report dated 960101 to 961231 (AN) be expunged, due to the following injustice.

2. Enclosures 1 through 8 are submitted for your review in this case. Reviewing Officer (RO) comments were unjust because RO did not have enough observation time on station, nor was present when I was experiencing family problems. RO joined unit 960917, was TAD from 961021 to 961111 (22 days), was on leave from 961212 to 961214 (1 day) and from 961223 to 961228 (4 days).

3. In accordance with reference (c), paragraphs 5001 and 5001.f6 the only time personal/family matters should be mentioned is when problems apparently affect performance or diminishes the effectiveness to lead, or hinder mission accomplishment, initiative and leadership potential, if not it is not worthy of mention. RO evaluations were not based on known facts, they were based on merely opinions and perceptions.

4. I have been in the Marine Corps for a total of 14 years and as competitive as the Marine Corps is, I don't need any blemishes in my record as the one mentioned on this fitness report. Once the fitness report in expunged, I would also like to be given consideration for promotion for last year's Gunnery Sergeant's board, due to fact that I was not selected to Gunnery Sergeant last year even though I was in the promotion zone. I believe it to be due to the report in question.

5. Your assistance and cooperation in this matter is greatly appreciated. I would like to move on with my career and put an end to this unfortunate chapter. If you have any question or if I may assist you in any way I can be reached at DSN 365-2589 or you can write to me at the following address: 286 Powers St. Oceanside CA 92054 or call me at my place of residence (760)430-2109.

6. SUBMITTED BY		7. GENERAL/SENIOR OFFICER ADVERSE REPORT SIGHTING		
NAME (Last, First, MI)		NAME (Last, First, MI)		
[REDACTED]		[REDACTED]		
GRADE	BSN	TITLE		
SGT	[REDACTED]	[REDACTED]		
[REDACTED]		GRADE	INITIAL	DATE
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]

STAPLE ADDITIONAL PAGES HERE

6158-98

1. MARINE REPORTED ON				
a. SSN	b. Last Name	c. First Name	d. MI	e. Grade
[REDACTED]	[REDACTED]	[REDACTED]	J	SSGT
2. OCCASION AND PERIOD			3. DUTY ASSIGNMENT	
a. OCC	b. From	c. To		
AN	960101	961231	ADMIN CHIEF	
4. PURPOSE				
Continuation		Adverse Report	HQMC Use	
<input type="checkbox"/> Section C		<input type="checkbox"/> MRO Statement	<input type="checkbox"/>	
<input type="checkbox"/> RS Certification		<input type="checkbox"/> REVO Statement		
<input type="checkbox"/> REVO Certification	<input checked="" type="checkbox"/> Third Officer Sighting			

5. TEXT

- The first paragraph of MRO's statement needs no adjudication.
- MRO mentions "family problems" in his second paragraph. These were two documented incidents of family violence in government quarters on Camp Pendleton. These are a matter of record with the PMO and the Family Advocacy Committee. The latter found him a Level III Spouse Abuser and prescribed appropriate counseling. The real issue raised by MRO in this paragraph, however, is observation time. First, the amount of time is irrelevant – MCO P1610.7 only prescribes minimum observation recommendations for the RS. Second, given the billets involved (XO and Admin Chief), the RO in this case would be well aware of, and have more observation of, the MRO's performance and situation than many other MRO to RO situations in the Marine Corps.
- In paragraph three, the MRO insinuates that paragraphs 5001 and 5001.f6 [correct paragraph designation is 5001.2f(6)] justify no mention of adversity. In fact, 5001.f6 refers the reader to 5001.2f(7) (the paragraph dealing with problems like this which require counseling and/or treatment) which states in bold print, **"To further state the MRO has or is correcting any of these problems still does not erase the adversity."** MRO also insinuates that his "effectiveness to lead, or hinder mission accomplishment, initiative and leadership potential" were not diminished. In fact, his lack of initiative was a major matter of discussion as the command group discussed appropriate actions for his problems. In fact, his overall performance as Admin Chief did suffer, in the opinion of the RO, and he reported it as such – which is his right. That his language was unclear was an attempt, in my opinion, to give MRO a break, merged with the RO's responsibility to be fair to other outstanding SNCO's who do not have Level III Spouse Abuse in their background/reporting period.
- MRO's paragraphs four and five do not require adjudication.

6. SUBMITTED BY		7. GENERAL/SENIOR OFFICER ADVERSE REPORT SIGHTING	
NAME (LAST, First, MI)		NAME (Last, First, MI)	
[REDACTED]		[REDACTED] M.	
GRADE	SSN	TITLE	
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SIGNATURE	DATE	GRADE	DATE
[REDACTED]	[REDACTED]	[REDACTED]	26 June 1998

STAPLE ADDITIONAL PAGES HERE

Encl (1)

6158-98

1. MARINE REPORTED ON					
a. SSN	b. Last Name	c. First Name	d. MI	e. Grade	
[REDACTED]	[REDACTED]	[REDACTED]	J	SSGT	
2. OCCASION AND PERIOD			3. DUTY ASSIGNMENT		
a. OCC	b. From	c. To	[REDACTED]		
AN	960101	961231			
4. PURPOSE					
Continuation		Adverse Report		HQM Use	
<input type="checkbox"/> Section C	<input checked="" type="checkbox"/> MRO Statement	<input type="checkbox"/>			
<input type="checkbox"/> RS Certification	<input type="checkbox"/> REVO Statement				
<input type="checkbox"/> REVO Certification					

5. TEXT

I have received a certified copy of the report identified in item 2.

- [REDACTED] I have no statement to make.
- [REDACTED] make the following statement.

- The first paragraph of the Third Officer statement needs no adjudication.
- I had mentioned family problems; Third Officer explicitly comments on family violence in government quarters on Camp Pendleton, that these are a matter of record with PMO and Family Advocacy Committee, and that the latter found me a Level III spouse abuser. I do not deny the incidents did occur, but the real issue and fact remains that the Executive Officer was not the RO during the aforementioned incidents, nor did he have enough observation time on station, and his knowledge of the incident was second hand. In fact, the RO's observance was very limited, since he reported into the command late in the reporting period and was TAD and on leave for much of that time.
- Paragraph 5001 mentions, "Flaws and mistakes will occur but unless they are so significant that they stifle the MRO's initiative and leadership potential, or hinder mission accomplishment, they are not worthy of mention. If such deficiencies do not result in learned improvement after counseling, then they become a matter of concern and should be reported as a pattern of unsatisfactory performance and professionalism". Reporting Senior was at the command for the entire reporting period while I was experiencing these problems; I was observed by him on a daily basis. As reflected in my section b and c comments these problems were not as significant to him as it was to others. The fact was, my wife and I were experiencing personal problems. The fact also was and I repeat for the record, that my wife and I were the only ones who took the initiative to rectify the problem. We sought counseling for several months through the SRIG Chaplain, and I enrolled in the 16 week Men's Anger Group (enclosed are letters by [REDACTED] (RS), and Cmdr Brimhall (SRIG Chaplain), as supporting evidence. The fact also was, that things were not handled properly from the beginning, and eventually appropriate action was taken by the Commanding Officer; there was one counseling session, which resulted in a Non-punitive letter of caution (censure or reprimand). Furthermore, I do not agree with the Commanding Officer's comment, "That his language was unclear and was an attempt, in his opinion, to give MRO a break..." Paragraph 5001.2f, clearly states, "Reporting Officials must never damn with faint praise nor hide behind policy definitions to avoid the responsibility and unpleasantness of reporting adversity. Tell it like it is; be specific; avoid vague and ambiguous language that only serves to confuse the reader." Which brings me to my point: just as timeliness should have been a factor, the vagueness of the RO leaves his comment open for numerous interpretation. "SSgt [REDACTED] conduct of his personal relations do not warrant him being rated "Outstanding".

4. Third Officer sighting paragraph four does not require adjudication.

6. SUBMITTED BY		7. GENERAL/SENIOR OFFICER ADVERSE REPORT SIGHTING		
NAME (LAST, First, MI)		NAME (Last, First, MI)		
[REDACTED]		[REDACTED]		
GRADE	SSN	TITLE		
SSGT	[REDACTED]	[REDACTED]		
[REDACTED]		GRADE	INITIAL	DATE
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]

STAPLE ADDITIONAL PAGES HERE

Encl (1)

6158-95

USMC FITNESS REPORT STANDARD ADDENDUM PAGE
NAVMC HQ 775 (REV. 3-93) (EF)

1. MARINE REPORTED ON									
a. SSN		b. Last Name		c. First Name		d. MI		e. Grade	
[REDACTED]		[REDACTED]		[REDACTED]		J		SSGT	
2. OCCASION AND PERIOD				3. DUTY ASSIGNMENT					
a. OCC		b. From		c. To					
AN		960101		961231		ADMIN CHIEF			
4. PURPOSE									
Continuation					HQMC Use				
<input type="checkbox"/> Section C		<input type="checkbox"/> MRO Statement		<input checked="" type="checkbox"/>		MFR			
<input type="checkbox"/> RS Certification		<input type="checkbox"/> REVO Statement							
<input type="checkbox"/> REVO Certification									

5. TEXT

[REDACTED] involvement with the PMO and Family Advocacy Committee at Camp Pendleton was in the opinion of the RO and the Battalion Commander, as third officer sighter, disruptive and significant enough to be made a matter of record per para 5001.2 f(6) of MCO P1610.7D.

While the RO's comment on this matter was vague, the Third Officer Sighter clarified and succinctly enumerated the facts [REDACTED] seen and commented on the Third Officer Sighter's statement and does not refute the facts. Furthermore, the Third Officer Sighter's statement validated [REDACTED] the RO of record.

Since no further adjudication is necessary, this report is accepted for the record.

[REDACTED]
11 AUG 1998
ASST HD, PERE/MIA/SEC (MMSB-90)
ADMIN REVIEW ONLY

6. SUBMITTED BY				7. GENERAL/SENIOR OFFICER ADVERSE REPORT SIGHTING					
NAME (LAST, First, MI)				NAME (LAST, First, MI)					
GRADE		SSN		TITLE					
SIGNATURE		DATE		GRADE		INITIAL		DATE	