



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

SMC
Docket No: 01131-99
22 July 1999

[REDACTED] USMC
[REDACTED]
[REDACTED]

Dear [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 removed the contested fitness report for 29 June to 31 October 1994 and modified the remaining contested report, for 1 November 1994 to 24 March 1995, by changing the entry in item 17b (whether the Marine has been the subject of any adverse report from outside the fitness reporting chain) from "Yes" to "No."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 July 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 10 February 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 warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that the remaining contested fitness report should stand.

The Board found no requirement that the reviewing officer counsel or meet with you concerning your disagreements with the remaining contested report. They found the reviewing officer added no new adverse information, so you had no right to make a rebuttal to his comments. Finally, your subsequent more favorable fitness reports did not persuade the Board that you deserved a better report for the period in question.

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
FEB 10 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
GUNNERY SERGEANT [REDACTED] USMC

Ref: (a) GySgt. [REDACTED] DD Form 149 of 31 Oct 98
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 4 February 1999 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 940629 to 941031 (AN) - *Removed by PERB*
- b. Report B - 941101 to 950324 (TR)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that the reports are unjust and unfairly prejudice his promotional opportunities. With specific regard to Report B, the petitioner challenges the mark of "yes" in Item 17b and provides his opinion into the manner in which he performed his duties, vice the manner in which he was evaluated. To support his appeal, he provides his own statement in which he narrates his dissatisfaction with the timeliness of submission, copies of the reports under consideration, a copy of his Master Brief Sheet, extracts from his Service Record Book (SRB), a copy of his rebuttal to Report B, and copies of subsequent appraisals.

3. In its proceedings, the PERB concluded that:

a. The removal of Report A is warranted and has been directed. The Board emphasizes that they do not challenge the "accuracy" of the evaluation, but the fact that as an adverse appraisal, it was not properly referred to the petitioner for his acknowledgment and the opportunity to append a statement of rebuttal. The age of the report (four years plus) merits its removal vice referral.

b. Report B is both administratively correct and procedurally complete as written and filed.

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(1) The original version of Report B never reached this Headquarters. In March 1997, a reconstructed copy was obtained and processed. As an adverse evaluation, the report was correctly referred to the petitioner and a rebuttal was attached. While the petitioner's signature date on the rebuttal is confusing, he states in reference (a) that he submitted his rebuttal four days after signing Item 24.

(2) The Reviewing Officer completed his review of Report B in a timely manner and concurred in the Reporting Senior's evaluation. The report was then third sighted by the Battalion Commander without any further comments.

(3) Despite his claims to the contrary, the petitioner fails to substantiate his disclaimer to counseling. In this regard, we specifically note that the Reviewing Officer stated that he had been "counseled continuously on his deficiencies." The petitioner is mistaken in implying that since he has no recorded counseling entries in his Service Record Book, he therefore received no performance counseling. The Board stresses that official counseling entries and performance counseling are two separate and independent administrative actions. One is not contingent upon the other.

(4) The entry of "yes" in Item 17b is considered an invalidating error which will be corrected per the Board's direction.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report B should remain a part of Gunnery Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3b(4) 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