



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 2965-99

3 June 1999

SSGT [REDACTED] USMC

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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 June 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 30 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. They were unable to find that your contested adverse fitness report resulted from the withdrawal of the court-martial charges against you. 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

2965-99

IN REPLY REFER TO:
1610
MMER/PERB
APR 30 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 STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] D Form 149 of 2 Feb 99
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 April 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960829 to 961218 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the marks on the fitness report were per the desires of the Reviewing Officer and centered on a pending Special Court-Martial, the charges for which were later withdrawn. To support his appeal, the petitioner furnishes his own statement, copies of other fitness reports, and copies of the letters convening and dismissing the Court-Martial.

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. Notwithstanding the petitioner's own statement, the Board is simply not convinced or otherwise persuaded that the report at issue reflects anything other than the Reporting Senior's own judgmental evaluation of the petitioner's performance during the stated period. Although the petitioner infers that Captain [REDACTED] succumbed to the Reviewing Officer's desire to "deflate" the markings, there is absolutely no documentary evidence to corroborate this argument. In fact, the Board notes that in the second to the last sentence of his official rebuttal to the report, the petitioner states he had received letters from 18 people who disagree with the Reviewing Officer's evaluation. The PERB has to wonder why those letters were not included as supporting documentation.

b. To justify the deletion or amendment of a fitness report, evidence of probable error or injustice should be produced. Such is simply not the situation in this case.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff 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