



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

BJG  
Docket No: 2866-98  
20 May 1999

MR. [REDACTED]  
[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 processed your contested fitness report for 1 March 1995 to 3 March 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 19 May 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 (HQMC) Performance Evaluation Review Board (PERB), dated 3 April 1998, and the advisory opinion from the HQMC Military Law Branch, Judge Advocate Division (JAM3), dated 19 January 1999, copies of which are attached. They also considered a copy of the service record book page 12 entry which documents your contested nonjudicial punishment (NJP), obtained from your former command that awarded the NJP.

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 and the advisory opinion from JAM3. They were unable to find that you were provided an inadequate opportunity for training in your military occupational specialty, or that your reporting officials expected you to perform as a sergeant with extensive experience in the Fleet Marine Force.

Further regarding your contested fitness report for 1 March 1995 to 3 March 1996, the Board did not find it to be inaccurate, vague, or inconsistent. They found no requirement that the narrative include specific justification for the marks assigned, none of which were adverse.

They were unable to find that the narrative was not performance oriented, that it violated "by grade" guidance, or that it omitted important information. They were unable to find that you were not counseled, noting that your third sighting officer stated that according to your reporting senior, your enlisted leaders "spent significant time" counseling you. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, they were unable to find that your reviewing officer expressed disagreement with your reporting senior as to your fitness for promotion, or that either your reviewing officer or your reporting senior commented to the effect that you accomplished "assigned tasks quietly and calmly."

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

Enclosures

Copy to:  
C. Mark Baldwin, Esq.

2866-98



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20380-1775

IN REPLY REFER TO:  
1610  
MMER/PERB  
3 Apr 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 SERGEANT  
GERALD [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 26 Dec 97  
(b) MCO P1610.7D  
(c) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 24 March 1998 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 950301 to 960303 (CH) -- Reference (b) applies
- b. Report B - 960620 to 960901 (TD) -- Reference (c) applies

2. The petitioner contends that both reports are the direct result of material error, unfair subjective opinion, and the refusal of his command to provide adequate and required formal training. He also argues that he was not allowed an opportunity to acknowledge and respond to the adverse nature of Report A. To support his appeal, the petitioner furnishes several statements of support.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. When Report A was initially received by this Headquarters, it was determined to be administratively and procedurally incorrect in that, as contended by the petitioner, no opportunity for a rebuttal was provided. However, this Headquarters undertook the necessary referral action and offered the petitioner a chance to respond. He did so, and provided his perspective into the situation during the 12 months covered by the report. In the final analysis, however, the Third Sighting Officer (Lieutenant Colonel [REDACTED]) agreed that the overall evaluation was accurate and the petitioner's disagreements were without merit. NOTE: The fitness report appended as TAB A hereto is the official report of record for the period 950301 to 960303 (CH) (vice the report currently reflected in the petitioner's official military personnel file).

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF SERGEANT  
[REDACTED] USMC

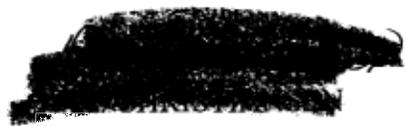
b. Contrary to the petitioner's assertions, the adversity in Report A is not about a lack of technical knowledge in his military occupational specialty (MOS). Rather, it is about poor attitude and improper exercising of leadership responsibilities. Of the 11 advocacy statements contained in enclosures (3) through (6) of reference (a), all address periods of performance either prior or subsequent to the period covered by Report A. Those statements in enclosures (7) are from ten corporals and one sergeant, none of which are specific as to how the contents of Report A are either inaccurate or in error. Further, as contemporaries and subordinates, it cannot be presumed they were more privy to the petitioner's duties and responsibilities than were the Reporting Senior and Reviewing Officer.

c. Regarding Report B, the evaluation was properly referred to the petitioner for his rebuttal. The Reviewing Officer adjudicated that rebuttal in detail, point for point, and generally concurred in the overall evaluation. The Third Sighting Officer, who was also the Battalion Commander, attested to the fairness of the report.

d. Notwithstanding the petitioner's beliefs, his previous performance while on recruiting duty and his performance subsequent to Report B are simply not germane to the truth and accuracy of the report. The Reporting Senior's observations were confined to the period covered by Report B -- nothing more or less.

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



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:  
1070  
JAM3  
19 JAN 1998

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF SERGEANT [REDACTED] 300  
U.S. MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States (1998  
Edition), Part V

Encl: (1) SRB, Page 12

1. We are asked to provide an opinion regarding that portion of  
Petitioner's application which requests that the entry reflecting  
his nonjudicial punishment (NJP) of 30 August 1996 be removed  
from his official records.

2. We recommend that relief be denied. Our analysis follows.

3. Background

a. The enclosure reflects that Petitioner accepted NJP on 30  
August 1996 for a single violation of Article 92, UCMJ, for  
disobeying an order to participate in a urinalysis. He was  
afforded the opportunity to consult with counsel prior to  
accepting the punishment, and was informed of his right under  
reference (a) to refuse such a resolution. He was awarded a  
reduction to corporal (E-4). He appealed the NJP. Although the  
guilty finding was affirmed, the reduction was suspended for 12  
months.

b. Petitioner was assigned to Weapons Company, 2d Battalion,  
6th Marine Regiment during the period from March 1995 to  
September 1996. He received two adverse fitness reports during  
this period, from two different Reporting Seniors and Reviewing  
Officers. In rebuttal statements to those fitness reports,  
Petitioner maintained in essence that the reports were inaccurate  
because he had performed well in his previous assignment as a  
recruiter, that he was performing well in his current assignment,  
and that any shortcomings were a result of the command's failure  
to provide refresher training for technical skills as a mortarman  
that had atrophied during his recruiting tour. Petitioner now  
reiterates those arguments, adding that the record of NJP should  
be expunged because that proceeding was manufactured by his

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION  
IN THE CASE OF SERGEANT GEORGE [REDACTED]  
U.S. MARINE CORPS

superiors in order to bolster their uncomplimentary assessments of him.

4. Analysis

a. The record of NJP at issue is correct in form, and suggests no irregularity in the proceeding itself. The punishment imposed was authorized based on the grade of the officer who imposed it, and a review of the record does not suggest that the NJP authority abused his discretion in any way at any point. Petitioner's claim that the offense was manufactured in order to discredit him is unsupported by any evidence, and it also does not make any sense. The NJP entry indicates that Petitioner disobeyed an order to participate in a urinalysis. This is a factually simple offense, not susceptible of easy fabrication. Petitioner was found guilty of that offense by his Battalion Commander, not by one of the reporting seniors or reviewing officers involved in the preparation of the fitness reports complained of. Petitioner's Regimental Commander also reviewed his appeal, and saw no reason to overturn the guilty finding.

b. Petitioner provides no basis for removal of the record of NJP.

5. Conclusion. Accordingly, for the reasons set forth above, we recommend the requested relief be denied.

[REDACTED]

Head, Military Law Branch  
Judge Advocate Division