



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

SMC
Docket No: 04704-99
17 September 1999

SGT [REDACTED] SMC
[REDACTED]

Dear Serge [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 16 September 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 20 July 1999, a copy of which is attached, and your letter of 17 August 1999 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 report of the PERB.

The Board found no requirement for the reporting senior to mention you had an injury before you took the physical fitness test (PFT), since they found no indication that the PFT was held when the medical exemption you documented was in effect. In any case, they noted your rebuttal on file in your record with the contested fitness report mentions the injury. The Board agreed with you that the marks assigned in the report, none of which is lower than "above average," appear inconsistent with the reporting senior's comment that you were an "Average Marine NCO [noncommissioned officer]." However, they found the error, if any, to be in your favor, since the derogatory comments which render the report adverse indicate you warranted lower marks. The Board was unable to find the third sighting officer had insufficient observation to support his comments, noting that his observation need not be direct. Finally, your more favorable fitness report for a previous period did not convince the Board that the contested report was invalid.

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

4709-99

IN REPLY REFER TO:
1610
MMER/PERB
JUL 20 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
SERGEANT [REDACTED] JSMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 5 May 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 July 1999 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 980301 to 980706 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner infers there is inconsistency between certain marks in Section B and comments in Section C. He also questions whether or not the Third Sighting Officer can make adverse comments since he was not even in command during the reporting period. As a final matter, the petitioner challenges the adversity of the report, especially since Item 17b is not marked "yes."

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. It is the Board's determination that the Section C comments amplify, and are not in significant conflict with, the Section B ratings. The overall comments reflect the "whole Marine" concept and are not dependent on any one Section B grade. Similarly, the Reporting Senior's comment on the low PFT score is a statement of fact and is not unwarranted. The implication is evidently that the petitioner was capable of much better.

b. The petitioner is mistaken about Item 17b not being marked "adverse." The purpose of that entry is to reflect the receipt of adverse material from outside the command -- not because the overall evaluation is adverse.

c. The Third Sighting Officer's commentary that the petitioner was a poor supervisor is viewed in the entire context of the comments made by the Reporting Senior and Reviewing Officer.

(3) PERB

470999

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

The Board discerns it as implying the petitioner needed to be a more assertive NCO and leader.

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