



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

SMC  
Docket No: 03881-99  
7 September 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 of the United States Code, section 1552.

You requested removal of your fitness report for 1 January to 16 June 1998, and you impliedly requested setting aside your relief for cause from recruiter duty. It is noted that the Commandant of the Marine Corps (CMC) has filed a memorandum for the record showing item 17a (whether the Marine concerned has been the subject of any commendatory report) of the contested fitness report should have been marked "Yes," and explaining that your meritorious mast should have been noted.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 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 10 June 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.

The Board did not consider it a material matter whether the session at which you were allegedly insubordinate was a "training" session, as the reporting senior described it, or a "counseling" session, as the master sergeant's statement at enclosure (8) to your application referred to it. The Board found nothing objectionable in the reporting senior's disclosure that you initially refused nonjudicial punishment (NJP), then entered into a plea bargain by which

you subjected yourself to NJP proceedings. The Board found item 17b of the contested fitness report did not refer to whether the report itself was adverse; rather, Marine Corps Order (MCO) P1610.7D, paragraph 4006.6 states it refers to whether the Marine has been the subject of adverse material or incident reports received from outside the fitness reporting chain. While your reporting senior had to consider all those of your contemporaries he had known in marking item 15a (general value to the service), the Board found your adverse mark in that item did not require marking item 17b "Yes." They noted that the contested report does not refer to "withholding" of promotion. They found the reporting senior's recommendation for your administrative separation was improper per MCO P1610.7D, paragraph 4007.4.e.(2), but they did not consider this a material error warranting corrective action in an otherwise adverse report. They noted that the professional military education courses you cited were completed before the reporting period, so they were properly not mentioned. They found the absence of the required statement "I have seen the Section B marks and Section C comments" not to be a material error warranting corrective action, as you submitted a rebuttal to the report, so you must have seen its content. They concluded the reviewing officer was not incorrect in stating your NJP was closed even if you had sought its removal in a pending complaint under Article 138, Uniform Code of Military Justice, since NJP is not a proper subject of an Article 138 complaint (Manual of the Judge Advocate General, paragraph 0304c.(2)(b) refers). They found the reviewing officer's statement that the NJP "should not be subject to debate in this report" does suggest you were debating the NJP in your rebuttal, when you were only challenging the reporting senior's account of the NJP. However, they did not find this a material error warranting corrective action. They found no requirement for the reviewing officer to mention he "approved of" the now removed service record page 11 counseling entry, even if he did approve of it. They determined the reviewing officer properly addressed your prior fitness report, as you raised it in your rebuttal. They found the late submission of the contested fitness report did not invalidate it. Finally, they found that the reviewing officer added no new adverse information requiring referral to you.

Since the Board found no defect in your relief for cause from recruiting duty, they had no basis to correct your record to show you completed a successful tour as a recruiter.

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

03881-99

DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103



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

Ref: (a) SSgt. [REDACTED] OD Form 149 of 8 Mar 99  
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 8 June 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980101 to 980616 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner objects to the manner in which the fitness report was administratively processed and also believes it is unfair and inaccurate. To support his appeal, the petitioner furnishes copies of documentation which he believes supports his arguments.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. As endorsed by the Reviewing Officer, Item 17a (commendatory) should have been marked yes. The Board does not, however, find this oversight to invalidate the entire report and has directed appropriate corrective action. A Memorandum for the Record will be prepared and inserted onto the performance ("P") section of the petitioner's official military personnel file annotating the corrections. In addition, his Master Brief Sheet will be modified accordingly. This type of corrective action is being taken to preclude the loss of legibility associated with correcting the actual report.

b. The petitioner's performance during the period was sub-par and his conduct was insubordinate. His reaction to counseling and training obviously demonstrated poor judgment. The report properly reflects an actual evaluation of the petitioner's performance and conduct. He was afforded an opportunity to respond and the entire situation was properly reviewed and adjudicated by the Reviewing Officer.

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c. Comparing the petitioner's performance to a national average is inappropriate and uses faulty statistics. The national average is an analytical metric that is used neither as a missioning tool nor as a standard of performance. The Reviewing Officer addressed other allegations about the processing of the report, such as the erroneous lack of mention of a Meritorious Mast, at the time of rebuttal. Any delays in handling the report were more a result of the petitioner's chosen tactics than as an administrative oversight.

d. In summation, the petitioner provides no new information or grounds to cause questioning the report's validity. The issues he raises are merely reiterations from his rebuttal and subsequent Request Mast, both of which have been concluded and resolved, largely not in his favor.

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]'s official military record. The limited corrective action identified in subparagraph 3a 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