



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

BJG
Docket No: 7296-01
17 October 2001

CAPT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Capt [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 directed that the contested fitness report for 1 January to 31 May 1999 be modified by changing section A, item 11e to show the reviewing officer was a lieutenant colonel, rather than a colonel.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 October 2001. 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 14 September 2001, 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. Accordingly, 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

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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
14 SEP 2001

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
CAPTAIN [REDACTED] USMCR

Ref: (a) Captain [REDACTED] DD Form 149 of 2 Jul 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 September 2001 to consider Captain [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 990101 to 990531 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is inaccurate and unjust in several areas. First, he indicates the Reviewing Officer's grade in Item 11e should be "LTCOL" vice "COL." He also contends that during the period he had no one on whom to report, thus the mark in Item H1 should have been marked "N/O." Finally, the petitioner alleges he was never provided any counsel concerning the contents of the report, nor did he have an opportunity to review the document or receive a copy.

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

a. The petitioner is correct concerning the grade of the Reviewing Officer. He was then, and still is, a Lieutenant Colonel. This is not viewed as an invalidating factor and the Board has directed the appropriate correction.

b. Since there is no documentation concerning specific Reporting Senior assignments within the petitioner's unit, the Board has no way of verifying his contention that he was never a Reporting Senior. Should he provide corroborating evidence, consideration will be given to changing the mark in Item H1 to "N/O." Again, this is not deemed an invalidating factor.

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

c. Once again, there is no substantiation or documentation that the petitioner never received any type of performance counseling. In this regard, we observe that counseling can and does take many styles and forms, some of which may not be readily apparent to the recipient. Likewise, we find nothing to support the petitioner's allegations that he was not aware of the contents of the report until almost a year after the reporting period ended. The Reporting Senior signed Item J indicating he provided the petitioner a copy of the report, and nothing furnished with reference (a) proves otherwise. Even if that was proven to be the case, it does not somehow call into question the accuracy or fairness of the report.

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

5. The case is forwarded for final action.

[REDACTED SIGNATURE]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps