



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

BJG
Docket No: 8218-01
10 January 2002

SGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear 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 10 January 2002. 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 29 October 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. They were unable to find you received no "proactive" counseling, nor could they find that the contested fitness report addressed minor matters that ought not to have been mentioned. Finally, they could not find that the adverse mark you were assigned in "courage" was based in any way on your convalescent leave, noting that the reporting senior made no reference to it. 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

45218-C1

IN REPLY REFER TO:
1610
MMER/PERB
29 OCT 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
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] Form 149 of 13 Aug 01
(b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 24 October 2001 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990508 to 991209 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is unjust and was not written within the spirit or intent of reference (b). Specifically, he argues the report at issue was used as both counseling and disciplinary tools. To support his appeal, the petitioner furnishes his own detailed statement and several items of documentary material.

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. The Reporting Senior has recorded the petitioner's conduct and performance, nothing more or less. Unfortunately for the petitioner, his conduct was obviously less than acceptable on more than just one occasion, and the subject of several counseling sessions.

b. The petitioner's receipt of an official page 11 entry during the reporting period does not somehow preclude the Reporting Senior from mentioning such behavior in the fitness report. In this regard, the Board emphasizes that each document is a separate administrative action where one is not contingent upon the other.

c. While there may have been other iterations of the report, the one which is ultimately forwarded to and accepted by

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this Headquarters is considered the official report of record. All others have no validity. We note the Reviewing Officer specifically indicated the delay in submitting the report was because it was "... returned more than once to ensure accuracy and justification. . . "

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