



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

BJG  
Docket No: 836-02  
15 August 2002

CWO2 [REDACTED] SMC  
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 and 15 August 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 (HQMC) Performance Evaluation Review Board (PERB), dated 24 January 2002, and the advisory opinion from the HQMC Officer Assignment Branch, Personnel Management Division, dated 15 February 2002, copies of which are attached. They also considered your letters dated 14 June and 29 July 2002, each with enclosure, and the letter from the reporting senior (RS) dated 30 July 2002. Finally, they considered the reports of the Judge Advocate General Manual investigation and the formal safety investigation in your case.

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 in concluding the contested fitness report should stand.

The Board noted the substantial evidence to the effect that you were not present when the mishap occurred, however, they did not consider this a matter invalidating the contested fitness report. They were unable to find your fitness reporting chain influenced the investigation of the mishap. They did not find any material error in the comments by the RS or reviewing officer (RO). In this regard, they observed that the Budget Worksheet at enclosure (11) to your application, which you provide to show the command was made aware of the need for a tire cage, is undated and unsigned; and it does not indicate to whom it was

submitted. In this regard, they noted that the third sighting officer acknowledged that funding had been requested for use in purchasing a tire safety cage; but he stated the cage was never ordered. They were not persuaded the contested fitness report was used as a disciplinary tool. Concerning the Navy and Marine Corps Achievement Medal awarded you by the RO, they noted it was for September 2000 to March 2001, after the reporting period in question. They were unable to find any prohibition against your reporting officials' use of information from the formal safety investigation report in preparing your fitness report. They found the third sighting officer added no new adverse information requiring referral to you. They found he adequately addressed the inconsistencies and disagreements between you and the RO. Finally, they considered it inconsequential that the third sighting officer did not sign section C of his addendum pages, noting that he did sign section D.

Since the Board found no defect in your performance record, they had no basis to strike your failure by the Fiscal Year 2002 Chief Warrant Officer 3 Selection Board.

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

Enclosures



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

IN REPLY REFER TO:  
1610  
MMER/PERB  
JAN 24 2002

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 CWO-2  
[REDACTED] USMC

Ref: (a) [REDACTED]s DD Form 149 of "19070901",  
received 14 November 2001  
(b) MCO P1610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 January 2002 to consider [REDACTED]s petition contained in reference (a). Removal of the fitness report for the period 000501 to 000811 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner's main contentions are that the fitness report was an attempt by the chain of command to quickly settle an unfortunate issue involving the permanent disability, as the result of a work accident, of one the Marines under his charge. He also believes he was unjustly found culpable and believes the substance of the challenged fitness report was contradicted by a JAG Manual Investigation concluded some 214 days subsequent to the ending date of the report. To support his appeal, the petitioner furnishes his own detailed statement, along with 24 enclosures.

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. At the outset, the Board emphasizes that the Investigating Officer's (IO) findings of fact, opinions, and recommendations for the JAG Manual Investigation were completed 10 August 2000 (one day prior to the ending date of the fitness report under consideration). The endorsement of that investigation by the Commanding General, I Marine Expeditionary Force (I MEF) (with modifications) in essence approved the investigation on 5 December 2000 (enclosure (6) to reference (a) refers). That was 116 days after the IO's investigation report and endorsement through the chain of command. Given that a Marine

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF CWO-2  
[REDACTED] SMC

suffered serious and permanent disabling injuries, the timeline was both reasonable and understandable.

b. A "reasonable person" can conclude that when the IO finished the JAG Manual Investigation, the Reporting Senior and Reviewing Officer had enough incontrovertible facts upon which to base the petitioner's relief for cause. Both officers afforded the petitioner due consideration in gathering his own facts prior to preparing rebuttals to the report, both of which were signed and dated 18 December 2000. Contrary to the petitioner's argument, nothing in this process was a quick attempt to settle the matter or unjustly determine culpability. Notwithstanding the requirement to report the petitioner's unfortunate failing, the report appears to be a fair evaluation of his overall performance and with a most positive "word picture" in Section I.

c. In paragraph seven of enclosure (6) to reference (a), the CG, I MEF clearly holds the petitioner responsible toward the safety of his Marines, and failing to properly execute that responsibility. The pertinent verbiage is quoted verbatim: *"This accident was entirely avoidable and was the direct result of the failure of members of Lance Corporal L\_\_\_\_\_ 's chain of command to instruct Marines on proper procedures and supervise to ensure those procedures were followed. Additionally, those same members, being aware of the significant hazard created by the lack of a tire cage, failed to bring this to the attention of the past and present battalion commanders and the present Service Company Commander. The platoon leadership, from Chief Warrant Officer [REDACTED] down, had a responsibility to train and supervise the Marines under their charge and ensure they were completing assigned tasks in a safe manner. They failed in this responsibility. Accordingly, Chief Warrant Officer [REDACTED] and Staff Sergeant N\_\_\_\_\_ were properly relieved for cause."*

d. The report was General Officer sighted by the Deputy CG, I MEF, now Major General [REDACTED]. The General not only upheld the evaluations by Major Rowe and Lieutenant Colonel [REDACTED] based on what was revealed by the JAG Manual Investigation of 10 August 2000, but also on the facts of a subsequent investigation. The petitioner is correct that paragraph 5005 of reference (a) requires the Third Sighting Officer to sight all adverse fitness reports, and there is no

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF CWO-2  
[REDACTED], [REDACTED] USMC

reason to believe Major General [REDACTED] did not, in fact, sight the entire report with all Addendum Pages. There is, however, no requirement for the Third Sighting Officer to sign all Addendum Pages. In his statement, Major General [REDACTED] indicates he has read the petitioner's rebuttal and the statements of both reporting officials, and he correctly signed Section D of both of his Addendum Pages. Everything has been accomplished per the provisions of reference (b).

e. Given the serious nature of the adversity reported in the fitness report under consideration, the late resolution is not considered inordinate, inappropriate, or in anyway an invalidating factor. To the contrary -- all due consideration was given to ensure the ultimate documentation of the facts was correct.

f. The Reporting Senior's letter at enclosure (1) to reference (a) was not issued in support of a request to eliminate the challenged fitness report. Rather, it was an endorsement to the FY02 CWO Selection Board concerning the petitioner's still credible potential and worth to the Marine Corps.

g. All of the petitioner's arguments taken into consideration, and acknowledging he was not the only person culpable, as a 16-year professional Marine engineer with requisite formal schooling, he knew his responsibilities. Simply stated, he failed, and nothing included with reference (a) proves to the contrary.

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

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[REDACTED] MC

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps  
Deputy Director  
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  
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QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1600  
MMAA-4  
15 Feb 02

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

Subj: BCNR PETITION [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of  
[REDACTED] USMC of 7 Feb 02.

1. Recommend disapproval of [REDACTED]'s implied request for removal of his failure of selection.
2. Per the reference, we reviewed [REDACTED]'s record and petition. [REDACTED] failed selection FY-02 USMC Chief Warrant Officer Selection Board. Subsequently, the Performance Evaluation Review Board (PERB) denied his request for removal of the Transfer fitness report of 000501 to 000811.
3. In our opinion, [REDACTED] record, as it appeared before the boards, was complete, accurate, and provided a fair assessment of his performance. Had the petitioned report been removed, the record would have been more competitive, enough so to warrant removal of the failure of selection. Since the unfavorable PERB action did not change the competitiveness of the record, we recommend disapproval of [REDACTED]'s request for removal of his failures of selection.
4. POC is [REDACTED].

[REDACTED]

Colonel, U. S. Marine Corps  
Head, Officer Assignment Branch  
Personnel Management Division