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

SMC
Docket No: 07867-99
21 January 2000

SSGT [redacted] USMC
[redacted]

Dear Staff 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. You requested removal of a fitness report for 16 March to 9 September 1996.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested fitness report by removing the following sentence from the reviewing officer's certification: "However, during this reporting period [you] had medical problems that he let hinder leadership principles such as leading by example."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 January 2000. 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 December 1999, a copy of which is attached, and your letter dated 11 January 2000.

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 warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board did not condone the late submission of the contested fitness report, but they did not find this invalidated it. They were unable to find the reporting senior never counseled you as to perceived deficiencies. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. They were unable to find block 18 of the report at issue should not reflect it was based on "daily" observation, noting the reporting senior's observation need not be direct.

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Finally, they were unable to find the reporting senior's narrative does not accurately describe your billet. In view of the above, 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 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

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

IN REPLY REFER TO:
1610
MMER/PERB
DEC 14 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] SMC

Ref: (a) SSgt [redacted] D Form 149 of 7 Oct 99
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 7 December 1999 to consider Staff Sergeant [redacted] petition contained in reference (a). Removal of the fitness report for the period 960316 to 960909 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report is neither an accurate nor fair depiction of his performance and that the marks in Section B do not match the narrative comments in Section C. To support his appeal, the petitioner furnishes statements from [redacted] nd Gunnery Sergean [redacted]

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. Contrary to the petitioner's arguments, the Board discerns absolutely no inconsistency between any of the ratings in Section B and the comments in Section C. The evaluation is an overall excellent/outstanding assessment of performance/capabilities with no mark below "excellent." Likewise, Section C paints a picture of successful mission accomplishment with absolutely no noted deficiencies.

b. While the advocacy letters from [redacted] nd Gunnery Sergeant [redacted] are complimentary and supportive, the Board observes that neither individual was in the petitioner's direct reporting chain; nor do they establish how they were able to better observe and evaluate his overall performance than were [redacted] and Ma [redacted]

(3) PERB

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c. The one area with which the Board takes exception is found in the Reviewing Officer's comments and refers to the petitioner's "medical problems." While those comments are inappropriate, the Board concludes they do not invalidate the entire substance of the report. In this regard, the PERB has directed the removal of the following sentence from the Reviewing Officer's remarks: "However, during this reporting period SSgt [redacted] medical problems that he let hinder leadership principles such as leading by example."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Staff Serge[redacted]official military record. The limited corrective action identified in subparagraph 3c 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