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

SMC
Docket No: 06517-99
25 February 2000

SGT [redacted] USMC
[redacted]

Dear 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 25 February 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 19 October 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 found that your better fitness report from the same reporting senior for the immediately preceding period did not invalidate the contested report for 1 October 1998 to 18 February 1999. They noted you did not receive the Navy and Marine Corps Achievement Medal until 6 May 1999, outside the reporting periods in question, so it was properly not noted. Finally, they were unable to find you were not counseled about perceived shortcomings. 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. 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

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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

6517-99

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

IN REPLY REFER TO:
1610
MMER/PERB
19 OCT 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 SERGEAN[redacted]USMC

Ref: (a) Sergean[redacted]D Form 149 of 29 Jun 99
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 13 October 1999 to consider Sergeant [redacted] petition contained in reference (a). Removal of the following fitness reports was requested:

a. Report A - 981001 to 990218 (CD)

b. Report B - 990219 to 990331 (CH)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that Report A, while not "adverse" is clearly not competitive and of a lower standard than received by other Marines in his unit. Additionally, he believes there was a personality conflict between he and the Reporting Senior (based on an investigation into allegations of dereliction of duty on his part). It is the petitioner's belief that he should have received some form of a "counseling session" during the reporting period so that he would have had an opportunity to rectify any shortcomings. Lastly, he indicates that he was never counseled on the fitness report itself, but merely received a phone call from the Reporting Senior asking if he had received a copy. Concerning Report B, the petitioner believes there had been sufficient time for the Reporting Senior to render an "observed" appraisal. It is his position that he simply changed job titles, as opposed to a section, unit, or Reporting Senior.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. While the petitioner may consider Report A to be a "noncompetitive" evaluation, that is simply no justification for removal. In all areas, he has been marked acceptable with no

notable deficiencies. Comments furnished by the Reviewing Officer indicate the petitioner is an average sergeant and promotable with his peers. Again, nothing adverse.

b. The petitioner furnishes no evidence of the alleged "personality conflict." Even if that were the case, the Board observes that even if such a conflict did exist, that does not automatically justify the deletion of a fitness report. It is the duty and responsibility of the Marine reported on to conform to the guidelines established by the Reporting Senior, unless and until that individual exceeds the bounds of professional conduct. Such is not evident in this case.

c. Report B was for a new duty assignment and encompassed less than 90 days of observed time. Although the Reporting Senior remained the same, reference (b) did not require an observed report. Succinctly stated, Lieutena[redacted]ercised his rightful prerogative in opting to submit a "not observed" evaluation.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports 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