



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

SMC
Docket No: 03415-98
24 May 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: SSG [REDACTED], USMC [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 10Apr98 w/attachments
(2) Subject's MBS dtd 28May98
(3) HQMC PERB memo dtd 27Jul98
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected by removing therefrom the fitness report for 1 January to 22 April 1994. A copy of this report is at Tab A.

2. The Board, consisting of Messrs. Pauling, Schultz and Exnicios, reviewed Petitioner's allegations of error and injustice on 20 May 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. The contested report, which covers only four months, was submitted on the occasion of Petitioner's transfer. The reporting senior signed the report on 18 November 1994, some seven months after the reporting period had ended on 22 April 1994. The report documents Petitioner's performance in his current grade of staff sergeant (pay grade E-6). It records his primary duty as maintenance chief, and marks him "NO" (not observed) in item 13b ("additional duties"). Item 18 reflects the report was based on "daily" observation.

c. The report at issue rates Petitioner "BA" (below average) in items 13e ("handling enlisted personnel"), 14f ("initiative"), and 14g ("judgment"); "AV" (average) in items 14j

("leadership") and 14n ("growth potential"); "AA" (above average) in items 14c ("military presence") and 14i ("force"); "EX" (excellent) in items 13a ("regular duties"), 13f ("training personnel") and 14d ("attention to duty"); and "OS" (outstanding) in items 13c ("administrative duties"), 14b ("personal appearance"), 14e ("cooperation"), 14k ("loyalty"), 14l ("personal relations"), and 14m ("economy of management"). In item 15 ("general value to the service"), Petitioner is marked "AA" with three staff sergeants above him (one "EX" to "OS" and two "OS"), and none with or below him. In item 16 ("considering the requirements of service in war, indicate your attitude toward having this Marine under your command"), the reporting senior indicates "Prefer Not [to have]." Item 19 ("qualified for promotion") is marked "No." Two blocks in item 21 ("reserved for future use") are marked. The report is per se adverse by virtue of the three "BA" marks, the mark of "Prefer Not" in item 16, and the mark of "No" in item 19.

d. The reporting senior's comments are as follows:

[Petitioner] has performed exceptionally well when closely supervised but has not made expected improvements in the areas of supervision of junior Marines, initiative and judgment. Technically proficient in his MOS [military occupational specialty], [Petitioner] has the capability of performing at greater levels of responsibility. Based on my estimate of this Marine's potential, I recommend that he not be promoted with his contemporaries.

e. Petitioner submitted a rebuttal dated 29 November 1994 (copy at Tab A), in which he asserts that for three months of the reporting period, he filled not only the billet of maintenance chief, but also the billet of communications chief, a billet calling for a master sergeant (pay grade E-8). He challenges his three "BA" and two "AA" marks, asserting various accomplishments. In this connection, he says he coordinated the daily activities for the entire platoon with no notice that his performance was not acceptable. He concedes that the reporting senior once counseled him for poor judgment while in the field, but he says he "made the necessary corrections" and that the reporting senior "was satisfied with the adjustments [he] had made." He concludes with the opinion that "This report is a reflection of a difference in leadership styles between [Petitioner] and [his] reporting senior."

f. The reviewing officer's certification on the contested fitness report is dated 31 January 1995. He indicated he had had sufficient opportunity to observe Petitioner, and that he concurred with the mark and peer ranking in item 15. He also gave the following comments responding to Petitioner's rebuttal:

I have personally observed and have been made aware of this Marine's conduct. [Petitioner] has been counselled several times concerning his deficiencies by his Company Commander and Company First Sergeant both verbally and in writing. While technically proficient and at times excellent, his overall performance during this period has not been that expected of a Marine Staff-Noncommissioned Officer. I am confident of the accuracy of this report, but do not agree with the RO [reviewing

officer] [sic]'s comments that he "should not be promoted with his contemporaries" based upon the short duration of this reporting period.

The applicable directive governing fitness reports, Marine Corps Order (MCO) P1610.7C, in paragraph 5004.1, includes the following:

In the event the MRO [Marine reported on] has attached a statement which disagrees with the RS [reporting senior] as to matters of fact, the REVO [reviewing officer] will take action to resolve inconsistencies and disagreements by indicating on a Standard Addendum Page actions taken and findings of fact. When the MRO's statement adds new information that was [not] previously addressed in the RS's comments, the REVO will take action to determine the validity of the new information, and on the Standard Addendum Page indicate actions taken and findings.

g. Petitioner also submitted a rebuttal, dated 29 March 1995 (copy at Tab A), to the reviewing officer's comments. He asserts that the reviewing officer's personal observations of his conduct were infrequent. Concerning the comments to the effect that he had been counseled, he says some of the counselings were "positive in nature and centered around [his] improvements in areas deemed necessary by [his] Reporting Senior." He says the company first sergeant never counseled him in writing. He concludes by stating his performance during this period was no different from that previously reported by his reporting senior, but that he was transferred and received the adverse report in question "because the Reporting Senior strongly disagreed with some judgment calls [Petitioner] made during this reporting period."

h. The third sighting officer, the commanding general, reviewed the report at issue on 25 April 1995 (copy at Tab A), over a year after the end of the reporting period. He states the reviewing officer, as the battalion commander during the entire four-month period, had sufficient observation. According to the third sighting officer, that some of the counseling Petitioner received may have been positive "is of no consequence." He says that while Petitioner is correct that the company first sergeant counseled him only orally, the company commander counseled him both orally and in writing, so the reviewing officer's comment on this matter was accurate. He further states that Petitioner's assertion the report was based on some judgment calls Petitioner made "is in no way inconsistent with the Reviewing Officer's comment concerning [Petitioner's] standard of performance." Finally, he finds the report "meets both the spirit and the letter of Marine Corps regulations and sets forth, without prejudice, the honestly held views of [Petitioner], the Reporting Senior and the Reviewing Officer."

i. Petitioner's immediately preceding fitness report from the same reporting senior and same command for 30 June to 31 December 1993, a copy of which is at his enclosure (9) to his application, assigned him "EX" to "OS" marks. It showed his primary duty as communications chief. The reporting senior's comments were as follows:

Currently filling in as Communications Chief, a MSGT [master sergeant]'s billet. As Maintenance Chief, consistently provides timely and thorough reports to senior commands. **TECHNICALLY PROFICIENT**; has consistently maintained communications electronics equipment at 95% or better enabling battalion to effect reliable command and control despite drastic equipment shortages. Has improved in areas of leadership and interaction with subordinates. Seeks self-improvement and strives to attain all command goals and objectives. Has completed necessary Resident/Non-resident PME [professional military education]. Promote when eligible.

Petitioner's Master Brief Sheet (MBS), at enclosure (2), shows the contested report stands out as the only adverse report he has ever received.

j. In his application, Petitioner alleges that the contested fitness report is inaccurate, unjust and contains numerous procedural errors. He believes the report was filed without adhering to established policies as outlined in MCO P1610.7C. He complains that the report does not mention that in addition to his primary staff sergeant billet as a maintenance chief, he filled the billet of communications chief, a master sergeant's billet. He notes that the report was submitted seven months after the ending date of the period, and states that during the seven-month wait for the report, he "raised a lot of fuss at [his] old command." While he maintains he was at no time unprofessional when speaking to the reporting senior of record, he says he was very insistent; and that after numerous attempts to resolve the problem, he informed the reporting senior that if he did not receive his fitness report soon, he would have to inform his chain of command, who would certainly take action. He asserts "This made her angry." Petitioner states that one month later, he had not heard from the reporting senior, so he informed his command, and they called the reporting senior's superior. He says a few days after he had informed his command, the reporting senior called Petitioner to tell him to come sign the fitness report, and then hung up on him. Petitioner believes his actions in attempting to obtain a report for the period in question caused the reporting senior embarrassment, resulting in the adverse report at issue.

k. Petitioner contends that the report in question was submitted to influence his promotion board and harm his career, and to serve an improper purpose as a counseling document. He feels the report evidences an unwarranted decline from the previous report by the same reporting senior. He asserts the contested report reflects the reporting senior's own precepts; that her expectations of him were unreasonable; and that the report violates the "by grade" guidance of MCO P1610.7C. He contends that the reporting senior's narrative was not performance-oriented; and that her comments did not meet the requirement of the fitness report order to explain the adverse marks. He argues that the marks are inconsistent among themselves, and that the marks and comments are inconsistent. He alleges he was marked down in item 14n to justify the low marks in other areas; that his mark in item 15 improperly resulted from averaging the marks in items 13 and 14; and that his item 15 mark was improperly influenced by the mark in item 16. He contends that the reporting senior erred by marking item 18 to show the report was based on "daily" rather than "frequent" observation.

He notes that the fitness report order stipulates item 21 is to be left blank, yet marks appear there. He objects that the comments of both the reporting senior and reviewing officer are vague and merely restate the marks. Finally, he asserts that the reviewing officer did not meet his duty to comment on the improprieties in the report, and adjudicate disagreements of fact between Petitioner and the reporting senior.

1. Enclosure (3) is the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in Petitioner's case. The report reflects the PERB decision to deny relief. PERB states that while late submission of fitness reports is neither condoned nor acceptable practice, this does not invalidate an otherwise administratively correct performance evaluation. They say Petitioner's belief that he received an adverse report because he prodded the reporting senior to submit it is "simply not grounded in fact" and is "merely the petitioner's speculation." They state he has provided no documentary evidence to show he simultaneously filled the positions of communications chief and maintenance chief, or that he spent any prolonged periods functioning in the billet of communications chief, which is a requirement for a mark other than "not observed" in item 13b ("additional duties"). PERB says Petitioner does not provide any substantive evidence to prove his contentions of violations of guidance in the fitness report order. They state that the three "BA" marks are adequately supported by the comment that Petitioner "has not made expected improvements in the areas of supervision of junior Marines, initiative and judgment." PERB states that Petitioner's opinion does not negate the three independent assessments of the reporting officials involved. They state the supporting letters at Petitioner's enclosures (10) and (11) of his application are not germane, since they relate to a time after the pertinent period. Finally, they note that the marks in item 21 were placed there by HQMC to generate administrative entries into the Automated Fitness Report System.

CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (3), the Board finds the existence of an injustice warranting removal of the contested report.

The Board particularly notes the short period of the report; the circumstances surrounding its late submission; the failure of the reporting officials to provide specific examples of unsatisfactory performance as justification for the adverse marks; the favorable evaluation from the same reporting senior in Petitioner's immediately preceding fitness report; the inconsistency of the adverse report at issue with all the other reports in Petitioner's record, before and after; the reviewing officer's having disagreed with the reporting senior by stating he felt Petitioner deserved to be marked as qualified for promotion; and the reviewing officer's failure to address new information raised in Petitioner's rebuttal, specifically, his assertion that he served in the billet of communications chief, a master sergeant's billet, and his citation of various accomplishments. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of Report To
18Nov94	[REDACTED] USMC	1Jan94	22Apr94

b. That there be inserted in his naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.

c. That the magnetic tape maintained by Headquarters Marine Corps be corrected accordingly.

d. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

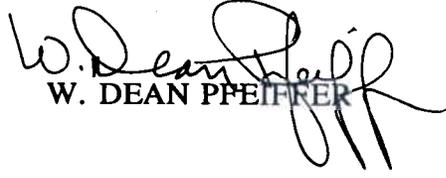
e. That any material directed to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

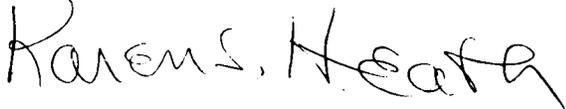
ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved:



KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

AUG 6 1999



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, D.C. 20380-1775

3415-98

IN REPLY REFER TO:
1610
MMER/PERB
27 Jul 98

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] USMC

Ref: (a) SSgt [REDACTED] DD Form 149 of 10 Apr 98
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 23 July 1998 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 940101 to 940422 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is inaccurate, unjust, and laden with violations of the Performance Evaluation System. He narrates those areas which he believes fail to comply with the guidance contained in reference (b) and provides supporting statements from Captain [REDACTED]

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 late submission of fitness reports is neither condoned nor an acceptable practice. Such a failing, however, does not serve to invalidate an otherwise administratively correct performance evaluation. That the petitioner believes the adversity of the report may (emphasis added) be attributable to his need to prod the Reporting Senior for completion of the evaluation is simply not grounded in fact. It is merely the petitioner's speculation.

b. The petitioner provides absolutely no documentary evidence to show that he simultaneously filled the positions of Electronic Maintenance Chief and Battalion Communications Chief, or that he spent any prolonged periods of time functioning in the latter billet (a requirement for marking Item 13b (Additional Duties) other than "not observed").

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

c. Throughout the 18-page statement appended to reference (a), the petitioner arduously cites individual paragraphs from the Performance Evaluation System directive that provide guidance to reporting officials on how to write fitness reports. It is the petitioner's opinion that those officers did not abide by the suggested guidance for marking Section B and in developing Section C comments. It further opines that the "below average" markings were not adequately justified. The Board concludes that the petitioner does not provide any substantive evidence to prove his claims. The markings of "below average" in the areas of "Handling Enlisted Personnel", "Initiative", and "Judgment" are discussed in the content that the petitioner ". . . has not made expected improvements in the areas of supervision of junior Marines, initiative and judgment." That singular sentence verifies and substantiates the markings. The opinion cited in the reference (a) does not negate the three independent assessments of the reporting officials involved.

d. While the advocacy letters from Captain [REDACTED] and CWO-3 [REDACTED] are supportive, the Board observes that their observation of the petitioner's performance was after the period covered by the challenged fitness report. Hence, their opinions are not germane to the issues.

e. With specific regard to the petitioner's challenge to the markings in Item 21, the Board points out that none of the reporting officials completed those entries. That action was taken by this Headquarters to generate certain administrative entries into the Automated Fitness Report System.

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

5. The case is forwarded for final action.

[REDACTED]

D. [REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps