



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 30-99
22 April 1999

SSGT [REDACTED] USMC

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of your contested fitness report for 1 March to 30 September 1993.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 April 1999. 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 22 December 1998, a copy of which is attached. They also considered your rebuttal letter dated 5 January 1999 with enclosure.

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 removal of the remaining contested fitness report, for 1 March 1991 to 26 April 1992. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board noted that your prior fitness report from the same reporting senior who submitted the contested report marked you only "EX" (excellent) to "OS" (outstanding), the second highest, in "general value to the service," while your contested report marked you "OS," the highest. They found no basis to doubt that your reporting senior took due account of the fact that the period in question was after the Desert Storm era, which made recruiting more difficult.

Since you did not submit the certificates of commendation listed on the awards history you provided, the Board was unable to find that they were personal to you, such that they should have been reflected in your fitness report for 1 March 1991 to 26 April 1992. If they were personal to you, they found that your reporting senior's failure to mention them would not warrant removing the contested report, rather, it would support correcting the report to show that you received the commendations. If the certificates were personal to you, you may submit them to HQMC (Code MMSB-30) with a request for appropriate correction of your fitness report record.

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



30-99

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

IN REPLY REFER TO:
1610
MMER/PERB
DEC 22 1998

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 15 Sep 98
(b) MCO P1610.7C w/Ch 1-5
(c) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 18 December 1998 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 910301 to 920426 (TR) -- Reference (b) applies
- b. Report B - 930301 to 930930 (GC) -- Reference (c) applies

2. The petitioner contends that Report A contains "erroneous markings." Specifically, he challenges the two marks of "above average" in Items 13c (administrative duties) and 13f (training personnel), and objects to the Reporting Senior's limited observation as a demonstration of the unfairness in judging those two areas as "above average." Concerning Report B, the petitioner states the evaluation is "erroneous" due to a "lack of procedural counseling and extenuating circumstances." He also takes exception with the two marks of "above average" in Items 13a (regular duties) and 14e (cooperation), as well as several comments in the Section C narrative.

3. In its proceedings, the PERB concluded that:

- a. Report A is both administratively correct and procedurally complete as written and filed. While the petitioner may object to the marks of "above average" in Section B, he offers absolutely nothing of a documentary nature to show that he somehow rated anything higher. We also note that the Reporting Senior marked "infrequent" in Item 18 of the report, reinforcing the petitioner's argument concerning limited observation. This is readily apparent to any reader/reviewer and constitutes neither an error nor an injustice.

- b. The removal of Report B is warranted and has been directed.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A should remain a part of Staff 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