



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

BJG
Docket No: 5106-99
1 October 1999

GYSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Gunnery Sergeant [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 your fitness reports for 1 November 1996 to 17 June 1997 and 18 June to 28 November 1997. It is noted that the Commandant of the Marine Corps (CMC) has referred both contested fitness reports to you to give you a chance to make a rebuttal, and is filing a memorandum to show that item 17a (whether the Marine has been the subject of a commendatory report) of your report for 18 June to 28 November 1997 should have been marked "yes" in light of your meritorious mast.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 September 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 Performance Evaluation Review Board (PERB), dated 5 August 1999, and a memorandum for the record dated 7 September 1999, copies of which are 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 was unable to find that your recruiting substation was overtasked, or that your reporting seniors did not take due account of the problems facing you. In this regard, they noted that both contested fitness reports specifically acknowledged such problems. Enclosure (4) to your application did not persuade them that the reporting senior erred by stating, in the

contested report for 1 November 1996 to 17 June 1997, that your "Overall results were in lower third of peers." In any case, they found that even if this statement were not precisely correct, the appropriate remedy would be to amend or remove the statement, rather than completely remove the report in which it appears.

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



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

5106-99

IN REPLY REFER TO:
1610
MMER/PERB
AUG 5 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
GUNNERY SERGEANT [REDACTED] SMC

Ref: (a) GySgt [REDACTED] DD Form 149 of 17 Dec 98
(b) MCO P1610.7D w/Ch 1
(c) MCO P1610.7D w/Ch 1-4

Encl: (1) Completed Fitness Report 961101 to 970617 (CH)
(2) Completed Fitness Report 970618 to 971128 (TR)

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 26 February 1999 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 961101 to 970617 (CH) -- Reference (b) applies
- b. Report B - 970618 to 971128 (TR) -- Reference (c) applies

2. The petitioner contends that comments contained in both reports render those evaluations adverse, and as such, should have been referred to him for the opportunity to append statements of rebuttal. To support his appeal, the petitioner furnishes his own detailed statement and several items of documentary material, to include seven letters on his behalf.

3. In its proceedings, the PERB concluded that:

- a. The overall tenor of both reports is such that each appraisal should have been referred to the petitioner for official acknowledgment (i.e., signature in Item 24) and the opportunity to provide rebuttal statements. Owing to the relative recency of both reports at the time the PERB first considered reference (a), the Board concluded that referral at that time would be appropriate.

- b. Both reports were sent to the petitioner with instructions concerning the submission of rebuttal statements and the timeline in which to accomplish that action. The petitioner, however, has failed to respond to official correspondence from

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

this Headquarters, even after telephonically advising the action agency of his intent in that regard. It is the position of the PERB that the petitioner has been given every opportunity to **officially** record his disagreements with the reports and have those concerns properly adjudicated by the reviewing officials involved. Since he opted to forego statements in his behalf, and notwithstanding the documentation provided with reference (a), the Board must presume that he is passively concurring in the accuracy and validity of the respective evaluations under consideration. The Board also stresses and emphasizes that the appeal system is not a substitute for proper resolution of adverse fitness reports per the provisions of references (b) and (c).

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports, as reflected in the enclosures, should remain a part of Gunnery 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

E106-99

MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: [REDACTED]
FAX: DS [REDACTED]
E-MAIL: [REDACTED]@NAVY.MIL

DATE: 7SEP99

DOCKET NO [REDACTED]

PETITIONER (PET): GYSG [REDACTED] USMC

PARTY CALLED: MS [REDACTED] PERB

TELEPHONE NUMBER [REDACTED]

WHAT I SAID: I REQUESTED THAT THE PERB CHANGE BLOCK 17.A, COMMENDATORY CORRESPONDENCE, FROM "NO" TO "YES", IN PET'S CONTESTED FITREP FOR 18JUN TO 28NOV97 BECAUSE OF THE MERITORIOUS MAST HE RECEIVED DURING THE PERIOD. I ALSO ASKED WHY THE PERB DID NOT ADDRESS PET'S CONTENTIONS AND ALLEGATIONS.

WHAT PARTY SAID [REDACTED] INFORMED ME THAT SHE WOULD INSERT A MEMO FOR THE RECORD IN PET'S OMPF DOCUMENTING THE CHANGE TO BLOCK 17.A. SHE ALSO INFORMED ME THAT THE REASON THE PERB DID NOT ADDRESS HIS CONTENTIONS AND ALLEGATIONS IS THAT HE DID NOT SUBMIT REBUTTALS TO THE CONTESTED FITREPS AFTER THE PERB RULED THAT THEY WERE "ADVERSE".

[REDACTED]
[REDACTED]
[REDACTED] PERB