



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

SMC
Docket No: 07981-98
29 April 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 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 Performance Evaluation Review Board (PERB), dated 9 November 1998, 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 no prohibition against addressing the same adverse matters in both the contested fitness report and your uncontested service record page 11 ("Administrative Remarks") counseling entry. In this regard, they noted that neither is technically considered to constitute a punitive action. 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 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

7981-98



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

IN REPLY REFER TO:
1610
MMER/PERB
9 Nov 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], [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 1 Sep 98
(b) MCO P1610.7D w/Ch 1-3

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 6 November 1998 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 970706 to 970831 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner believes that rather than evaluating his performance during the period covered by the report, the appraisal unfairly reflects one incident. To support his appeal, the petitioner provides his own detailed statement, a copy of the fitness report, extracts from his Service Record Book (SRB), and copies of reports received prior and subsequent to the one under consideration.

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. The adversity of the report is in the Section C comments and is an uncontroverted matter of fact. While only a 57-day report, reference (b) includes several exceptions to the usual 90-day rule concerning observed fitness reports. Adverse situations or incidents, such as the one delineated in the report, constitute such an exception.

b. Reference (a) has not identified any policy or procedural errors relative to the guidance contained in reference (b). In summation, the petitioner's appeal merely offers his continuing disagreement and differing opinion. The Reporting Senior's opinion, as confirmed by the Reviewing Officer, believed the awarding of the adverse report was appropriate and warranted. We have no reason to question or challenge that decision.

c. As a final matter, the petitioner's prior and subsequent fitness reports have absolutely no relevancy on the issues

(3) PERB

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contained in the challenged fitness report. They represent and evaluate performance during different periods and under different Reporting Seniors and Reviewing Officers.

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 SIGNATURE]

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