



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

BJG
Docket No: 88-01
12 December 2001

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.

It is noted that the Commandant of the Marine Corps (CMC) has directed removal of the contested fitness report for 1 October to 15 December 1999, and modification of the contested report for 5 June to 30 September 1999 by removing from Section I "MRO [Marine reported on] officially placed on Weight [sic] control." You may apply to the Headquarters Marine Corps (HQMC) Promotion Branch (MMPR-2) for remedial consideration for promotion on the basis of this corrective action. If you are selected by the remedial board, your failure of selection by the corresponding regular board will be removed administratively.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 December 2001. 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 HQMC Performance Evaluation Review Board (PERB), dated 27 December 2000, a copy of which is attached, and your undated rebuttal letter.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice warranting complete removal of the remaining contested fitness report for 5 June to 30 September 1999. In this connection, the Board substantially concurred with the report of the PERB. They were unable to find the remaining contested report contained inaccurate information regarding your weight or body fat. 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

1610
MMER/PERB
27 DEC 2000

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] USMC

Ref: (a) GySgt [REDACTED] DD Form 149 of 27 Aug 99
(b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 19 December 2000 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 990605 to 990930 (AN)
- b. Report B - 991001 to 991215 (TR)

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

2. The petitioner contends that Report A contains several inaccurate statements, especially concerning his assignment to the Weight Control Program. Concerning Report B, the petitioner again argues inaccuracy, believes there are several technical inaccuracies, and that both reports reflect vindictive efforts on the part of the command. To support his appeal, the petitioner furnishes several items of documentation.

3. In its proceedings, the PERB concluded that:

a. With one exception, Report A is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

(1) The Board specifically notes that when the petitioner acknowledged the adverse nature of the evaluation, he chose to omit any statement in his own behalf. In so doing, we must presume that he passively concurred in the accuracy of the recorded information and had no extenuating or mitigating circumstances which to present. It was at that time that he should have surfaced the concerns he now raises in reference (a). To do so more than a year after the fact lacks both timeliness and credibility.

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(2) Notwithstanding the documentation furnished in support of reference (a), the Board finds only one statement in Report A that is inaccurate (to wit: "MRO officially placed on weight control."). They do not, however, find that this invalidates an otherwise accurate appraisal and has directed elimination of the objectionable sentence.

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

4. The Board's opinion, based on deliberation and secret ballot vote is that Report A, as modified, should remain a part of Gunnery Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3a(2) is considered sufficient.

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