



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

SMC
Docket No: 00224-01
6 April 2001

SSG [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Staff [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 5 April 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 Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 9 January 2001, 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. Since the Board found no defect in the contested fitness report for 1 May to 31 December 1995, they found nothing objectionable about the reference, in the contested report for 1 January to 25 July 1996, to "growth experienced in leadership, maturity, & [sic] judgement." 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



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

IN REPLY REFER TO:
1610
MMER/PERB
9 JAN 2001

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] Form 149 of 16 Oct 00
(b) MCO P1610.7D
(c) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 December 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 950501 to 951231 (AN) -- Reference (b) applies
- b. Report B - 960101 to 960725 (CH) -- Reference (c) applies

2. The petitioner contends that both reports contain procedural errors, and are unfair, inaccurate, and unjust. To support his appeal, the petitioner furnishes his own statement detailing his perception of the events and circumstances during the stated periods, and a copy of an e-mail transmission from the Reporting Senior of record.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. There is nothing adverse in Report A; nor is there any inconsistency between the ratings assigned in Section B and the comments contained in Section C. While the petitioner received one "average" and five "above average" grades, those marks are not unsatisfactory and did not require specific justification in Section C.

b. The petitioner's assertion that he signed blank copies of Report A is not only contrary to the guidance contained in reference (b), but also a claim which is unsupported and uncorroborated. Even if, as he alleges, he did not view the completed report, that in and of itself would not constitute grounds for removal.

BJ PERB

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c. The implication that the Page 11 Service Record Book (SRB) entry made on him (enclosure (6) to reference (a)) and signed on 4 December 1995 unduly influenced the Reporting Senior, and caused the submission of Report A in lieu of non judicial punishment (NJP) is unsubstantiated. First of all, the decision to conduct NJP was the decision of the Commanding Officer, not the Reporting Senior. If the Commanding Officer chose to issue a Page 11 counseling entry vice NJP, that is an option afforded under the UCMJ. Regardless, the Reporting Senior made no inference to an offense under the UCMJ or to a Page 11 entry that would render the report "adverse." Not withstanding the foregoing, nothing in reference (b) would have precluded the Reporting Senior from considering the context of the Page 11 entry in formulating Section B grades or Section C comments.

d. By association, the petitioner attempts to link his arguments regarding Report A to Report B. There is absolutely nothing adverse, derogatory, or apparently unjust with Report B. It records a marked development in leadership, professional maturity, and judgment. These are all attributes the Reporting Senior predicted in Report A would grow if the petitioner maintained a positive attitude. Obviously he did.

e. The e-mail from [REDACTED] is rather general, but apparently applies to Report A. Contrary to the petitioner's argument, it appears the Reporting Senior did everything in his power to avoid any bias based on the Page 11 entry. What has been indicated in the e-mail transmission is that the petitioner had several problems in addition to the improper sale of a firearm. Regardless, [REDACTED] e-mail does not repudiate the truth or accuracy of either of the challenged fitness reports.

f. The basis of Lieutenant [REDACTED] advocacy letter at enclosure (8) to reference (a) is not established. He fails to document upon what credible evidence his investigation and review of the petitioner's "situation" is founded. Furthermore, his defamation of the Reporting Senior's actions in preparing Reports A and B as "unfair and inappropriate" is neither warranted nor substantiated. Lieutenant [REDACTED] does not show or explain how he was more aware of the petitioner's performance during the stated periods than were the reporting officials, or for that matter, that he was even physically present. Simply stated, and for whatever good intentions, Lieutenant [REDACTED] observations are not germane.

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4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports 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