



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

SMC
Docket No: 01944-01
21 June 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) directed modification of the contested fitness report for 1 January to 7 July 2000 by removal of the following from section I: "where he was charged with Driving While Intoxicated, later."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 June 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 March 2001, a copy of which is attached, and your letter of 23 April 2001 with enclosures.

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 the reporting senior erred by stating, in section F, that you had an extramarital affair. In this regard, they found no prohibition against mentioning misconduct for which no charges have been filed and no disciplinary action has been taken. 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

1944-01



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

IN REPLY REFER TO:

1610
MMER/PERB
9 MAR 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
GUNNERY SERGEANT [REDACTED], [REDACTED] USMC

Ref: (a) GySgt [REDACTED]'s DD Form 149 of 29 Nov 00
(b) MCO P1610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 7 March 2001 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 000101 to 000707 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report is based on two separate incidents, neither of which has resulted in a conviction. To support his appeal, the petitioner furnishes his own statement.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board emphasizes that when the petitioner responded to the adverse nature of the report (evidence his statement of 12 July 2000), he made the same basic statement he now provides in reference (a). There are, however, no items of documentation to substantiate his claims. We also invite attention to the provisions of subparagraph 5008.3 of reference (b) which stipulate that the appeal system is not a substitute for proper resolution of an adverse fitness report at the time of processing and review. Simply stated, the petitioner has failed to meet the burden of proof that the report is either inaccurate or unjust.

b. The one area with which the Board disagrees is found in Section I (to wit: "...charged with Driving While Intoxicated..."). While the Board acknowledges that the petitioner was involved in

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an alcohol-related incident, mentioning something for which he was not convicted is prejudicial. The Board does not, however, find this to invalidate the entire report and has directed removal of the following verbiage from Section I: "...where he was charged with Driving While Intoxicated, later..." As modified, the sentence will read: "Alcohol incident: MRO involved in a traffic accident adjudicated in court to a conviction of Careless and Reckless Driving."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the modified version of the contested report 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