



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

BJG
Docket No: 3156-01
11 April 2002

[REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Sergeant [REDACTED]

This 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 reconsideration as to the fitness report for 1 October 1998 to 31 March 1999. Your previous case, docket number 7632-00, was denied on 3 May 2001. You also made new requests to remove your relief for cause from recruiting duty, which was requested on 5 April 1999; your nonjudicial punishment of 29 March 1999; and your service record page 11 counseling entries dated 17 and 24 February 1999.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 11 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 current application, together with all material submitted in support thereof, the Board's file on your prior case (including the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) dated 6 November 2000, a copy of which is attached), your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the PERB in your current case, dated 3 October 2001, and the advisory opinions from the HQMC Military Law Branch, Judge Advocate Division (JAM4), dated 2 July 2001, the Marine Corps Recruiting Command, dated 17 July 2001, and the Manpower Management Information Systems Division (MIFD), dated 22 August 2001, 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 in your current case and the advisory opinions. The two new supporting statements you provided, from a Marine Corps gunnery sergeant and lieutenant colonel (retired), did not persuade them that any of the contested actions were unwarranted.

They were unable to find that your noncommissioned officer in charge "had an aversion working with [you]," or if he did, that this was without good reason; nor could they find that his attitude toward you was a significant factor, apart from your own conduct and performance, in the decision to take any of the contested actions against you. In view of the above, the Board again voted to deny any relief. 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

Enclosures



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

IN REPLY REFER TO:
1610
MMER/PERB
6 NOV 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
SERGEANT [REDACTED], USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 28 Jul 00
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 2 November 2000 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 981001 to 990331 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner provides his perspective into the events and circumstances culminating in the non judicial punishment (NJP) recorded in the challenged fitness report. By inference, he alleges that both the NJP and the resulting fitness report are unfair/unjust. The petitioner also believes that the final sentence in Section I, concerning being processed for a relief for cause, violates the provisions of reference (b).

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. As identified by the petitioner, the comment by the Reporting Senior (Section I) is both inappropriate and premature. The Board does not, however, find this error to invalidate an otherwise completely acceptable and justified fitness report. In this regard, the Board has directed elimination of the offending statement (i.e., "Accordingly, he will be processed in accordance with volume three for a relief for cause.").

b. The uncontroverted matter of fact within the fitness report is that the NJP occurred and was properly recorded via the performance evaluation system. Unless and until that action is set aside, removal of the fitness report is simply not warranted.

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

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Sergeant [REDACTED]'s official military record. The limited corrective action identified in subparagraph 3a 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



DEPARTMENT OF THE NAVY
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3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

3156.01

IN REPLY REFER TO:

1610
MMER/PERB
3 OCT 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
SERGEANT [REDACTED] JR., [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 2 Apr 01
(b) MCO P1610.7E
(c) PERB Advisory 1610 MMER/PERB of 6 Nov 00

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 4 October 2001 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 981001 to 990331 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report. NOTE: Both the PERB and BCNR previously denied Sergeant [REDACTED] request to remove the aforementioned fitness report. Your 07632-00 refers.

2. The petitioner contends the report is inaccurate and unjust and that the recruiting station officials involved in his situation were targeting him by creating a persona that never existed. To support his appeal, the petitioner furnishes his own detailed statement, recruiting station information, two letters of reference, and a copy of his relief for cause package.

3. In its proceedings, the PERB once again concluded that the report is both administratively correct and procedurally complete as written and filed. Simply stated, the petitioner has not provided anything in the way of new or relevant material evidence that would cause the PERB to revisit it's prior decision. The corrective action and opinions/conclusions cited in reference (c) remain valid.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED] official military record.

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

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



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070

JAM4

02 JUL 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF SERGEANT [REDACTED] JR. [REDACTED]
USMC

1. We are asked to provide an advisory opinion on Petitioner's request for the removal from his Service Record Book (SRB) and his official military personnel file (OMPF) of all references to his nonjudicial punishment (NJP) of 29 March 1999 and his subsequent relief for cause. In addition, Petitioner requests the removal of all related adverse page 11 entries from his SRB and OMPF.

2. We recommend that Petitioner's request for relief be denied. Our analysis follows.

3. Background.

a. On 17 February 1999, Petitioner received a page-11 counseling entry for failing to perform his recruiting mission, specifically, low productivity.

b. On 24 February 1999, Petitioner received another page-11 counseling entry for misconduct. This counseling entry was for repeated tardiness, disobedience of a lawful order, and failure to meet minimum performance standards.

c. On 19 March 1999, Petitioner was disrespectful in language toward his staff noncommissioned officer in charge (SNCOIC) by saying, "What the fuck, are you fucking recording me?" On 29 March 1999, Petitioner received NJP for insubordination conduct toward a noncommissioned officer in violation of Article 91 of the Uniform Code of Military Justice (UCMJ). Petitioner was awarded a forfeiture of \$375.00 per month for 2 months. Petitioner appealed. Petitioner's appeal was denied on 17 May 1999.

d. On 10 September 1999, Petitioner was relieved for cause and his additional Military Occupational Specialty (MOS) of 8411 voided.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF SERGEANT [REDACTED] JR. [REDACTED]
USMC

3. Analysis. No legal error occurred in the imposition of NJP or in Petitioner's relief for cause. Petitioner, however, now claims that his NJP and relief for cause were unjust because his command refused to grant his request to be transferred out of what he perceived to be a difficult working environment. Petitioner's claim is without merit. Personnel decisions are based upon the needs of the Marine Corps and not necessarily the individual preferences of a single Marine. In this case, Petitioner's request to be moved out of this office coincidentally occurred simultaneously with his failure to meet his recruiting mission. Petitioner was counseled on numerous occasions that his attitude and conduct needed improvement if he wished to remain on recruiting duty. Despite reasonable efforts by the command to give Petitioner notice that continued non-performance and misconduct could result in adverse administrative and/or disciplinary action, Petitioner did not respond positively to the counseling. Instead, Petitioner elected to be disrespectful in language towards his SNCOIC. This behavior and substandard performance led to Petitioner's NJP and subsequent relief for cause. If Petitioner's working environment was as untenable as he now portrays it, his appropriate course of action was to request mast not violate the UCMJ.

4. Recommendation. Accordingly, we recommend that Petitioner's request for relief be denied.

[REDACTED]
Head, Military Law Branch
Judge Advocate Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
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IN REPLY REFER TO:
1070
MIFD
22 AUG 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

1. Sergeant [REDACTED] application with supporting documents has been reviewed concerning his request for removal of the following from his service records:

- a. Relief for cause documents on file in his official military personnel files (OMPF).
- b. Offenses and Punishments NAVMC 118(12) page 12 entry dated 990329.
- c. Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 990217 and 990224.

2. MCO P1070.12J, Marine Corps Individual Records Administration Manual (IRAM), chapter 1, sets forth guidance and provides information on the contents of the OMPF in use at Headquarters, U. S. Marine Corps. Limitations exist regarding the types of documents authorized for inclusion in the OMPF.

3. Paragraph 4010 of the IRAM authorizes commanders to make entries on page 11 which are considered matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book (SRB) or the Marine's automated record.

4. Paragraph 4011 of the IRAM authorizes commanders to make entries on page 12 which is designed for recording offenses and punishments and for establishing command jurisdiction at the time of the offense.

5. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation. In cases involving unsatisfactory performance, pattern of misconduct, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriate counseling and personnel records.

6. MCO 1610.12, the U.S. Marine Corps Counseling Program states that:

a. "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance.

b. Increase individual performance and productivity through counseling and thereby increases unit readiness and effectiveness.

c. Counseling enhances the leader's ability to improve the junior's performance."

7. The following comments/opinions concerning the relief for cause documents on file in his OMPF are provided:

a. A copy of the approved relief for cause package does meet the guidelines contained in paragraph 1000.4 of the IRAM for inclusion in his OMPF.

b. Sergeant [REDACTED] provided the opportunity to make a rebuttal statement as required by paragraph 1000.4c of the IRAM.

8. The following comments/opinions concerning the page 12 entry dated 990329 are provided:

a. A page 12 is required when NJP is imposed as authorized by the Uniformed Code of Military Justice (UCMJ), Article 15, and the Manual for Courts-Martial (MCM).

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED] JSMC

b. The elements of a proper page 12 entry are: The date of the entry; the article(s) of the UCMJ violated; a summary of the offense; the punishment imposed; the RUC of the unit reporting the punishment; the unit diary (UD) number and date on which the punishment is reported; whether an appeal was made and action taken on the appeal, if any; the entry must state the billet and grade of the officer imposing the NJP; and if a forfeiture is imposed, include the amount per month, number of months, and total amount of forfeiture.

c. A copy of the page 12 entry dated 990329 is required to be included in Sergeant [REDACTED] OMPF when he reenlists for continued active service in the Marine Corps. Sergeant [REDACTED] current enlistment began on 18 June 1998 and does not expire until October 17, 2001. The page 12 currently on file in his OMPF was documented evidence in support of his relief for cause package.

d. The page 12 entry dated 990329 meets the elements of a proper page 12 entry per paragraph 4011 of the IRAM with the exception that the copy available is not signed by the commander or a designated representative authorized to sign by direction.

e. Even though the page 12 entry that contains information of the NJP is not signed by the commander or a designated representative authorized to sign by direction, it can be presumed that the original copy on file in his SRB has been authenticated per paragraph 4001.4h of the IRAM and should be included in his OMPF when he reenlists during October 2001.

9. The following comments/opinions concerning the page 11 entries dated 9990217 and 990224 are provided:

a. The counseling entries do meet the elements of a proper page 11 counseling in that they list deficiencies, recommendations for corrective action, available assistance, and states that Sergeant [REDACTED] provided the opportunity to make a rebuttal statement. Additionally, the entries afford him an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the SRB.

b. Sergeant [REDACTED] acknowledged the counseling entries by his signature and indicated his desire to make a statement in rebuttal. It is not known if he refutes the contents of the page 11 entries in his rebuttal statements since he does not include copies of those statements in his application nor are they available in his OMPF.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED] USMC

10. In view of the above, it is recommended that:

a. The Board for Correction of Naval Records disapprove Sergeant [REDACTED] request for removal of the relief for cause package from his OMPF.

b. The Board for Correction of Naval Records disapprove Sergeant [REDACTED] request for removal of the Offenses and Punishment NAVMC 118(12) page 12 entry dated 990329 and the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 990217 and 990224 from his service records.

c. If the Board for Correction of Naval Records finds that Sergeant [REDACTED] records are in error or an injustice was committed, approve the removal of his relief for cause package, the Offenses and Punishments NAVMC 118(12) page 12 entry dated 990329, and the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 990217 and 990224 from his service records.

11. Point of contact is [REDACTED] at DSN [REDACTED]

[REDACTED]

Director
Manpower Management Information
Systems Division