



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

BJG
Docket No: 4133-01
28 December 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: SSGT [REDACTED], USMC, [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 31 Jan 01 w/attachment
(2) HQMC MMER memo dtd 21 May 01 w/encl
(3) HQMC MIFD memo dtd 29 Jun 01 w/encl
(4) MCRC memo dtd 10 Jul 01
(5) Subject's ltr dtd 22 Sep 01 e/encl
(6) Memo for record dtd 18 Dec 01
(7) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 1 January to 26 April 1996, a copy of which is at Tab A to enclosure (1). As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness report. It is noted that this fitness report cited Petitioner's relief for cause (RFC) from recruiting duty, requested on 23 April 1996. It is presumed that he desires removal of all other references to his RFC. Copies of RFC documents appearing in his Official Military Personnel File (OMPF) are at Tab B. It is further presumed that he desires removal of the service record page 11 ("Administrative Remarks (1070)") counseling entry dated 17 April 1996, a copy of which is at Tab C, as he says it resulted from the fitness report.

2. The Board, consisting of Messrs. Leeman, Lightle, and Morgan, reviewed Petitioner's allegations of error and injustice on 19 December 2001, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (3), the HQMC Manpower Management Information Systems Division (MIFD) has commented to the effect that the RFC documentation, except the Commandant of the Marine Corps (CMC) message date time group (DTG) 220923Z JUL96, Subject: Relief for Cause C/O (case of) Petitioner (a copy of which is enclosed with the MIFD opinion), should be removed, as the documentation does not meet the guidelines of Marine Corps Order 1070.14A for inclusion in the OMPF. The message MIFD recommends retaining reflects that Petitioner was the subject of an RFC, but it does not reveal the basis. MIFD further comments to the effect that the page 11 entry should stand. In this regard, they state that the page 11 counseling has no correlation with the preparation of a fitness report.

c. In correspondence attached as enclosure (4), the Marine Corps Recruiting Command also recommends removing Petitioner's RFC documentation, except for records necessary to reflect that he was relieved from recruiting duty.

d. Enclosure (5) is Petitioner's rebuttal to the advisory opinions. He provides his rebuttal of 17 April 1996 to the page 11 entry, and he states that he does not know why it is not in his record.

e. The memorandum for the record at enclosure (6) reveals that the HQMC PERB directed removal of Petitioner's contested fitness report because of the RFC of both the commanding officer and operations officer, the commanding general's statement concerning sufficiency of evidence against Petitioner, the appearance that the fitness report had been in lieu of disciplinary action, and the absence of signatures from statements against Petitioner.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief, specifically, removal of all RFC documentation except the CMC message.

The Board agrees with the advisory opinions at enclosures (3) and (4) in finding that the RFC documentation, except the CMC message reflecting that Petitioner was the subject of an RFC, should be removed. They further agree with the MIFD opinion at enclosure (3) in finding that the page 11 entry should stand. In this regard, they find that the PERB basis for removing the contested fitness report does not support removing the page 11 entry. They note that Petitioner may, if he wishes, submit his rebuttal of 17 April 1996 to HQMC (MMSB) for filing in his record with the page 11 entry.

In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected by removing all documentation of his RFC from recruiting duty, except the CMC message DTG 220923Z JUL 96, Subject: Relief for Cause C/O Petitioner (documents to be removed at OMPF microfiche 2, frames B8 through D14, and E2).

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

Robert D. Zsalmán
For W. DEAN PFEIFFER
Executive Director



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

IN REPLY REFER TO:
1610
MMER
21 May 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 21 May 01

1. As evidenced by the enclosure, PERB removed from Staff Sergeant [REDACTED] official military record, the fitness report for the period 960101 to 960426 (CD).
2. We defer to BCNR on the remainder of Staff Sergeant [REDACTED] requests.

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

4133-01



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

IN REPLY REFER TO:
1610
MMER/PERB
21 MAY 2001

From: Commandant of the Marine Corps
To: Staff Sergeant [Redacted] SMC

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per reference (a), the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
18 May 96	Ma [Redacted]	960101 to 960426 (CD)

2. There will be inserted in your Naval record a memorandum in place of the removed report containing appropriate identifying data concerning said report. The memorandum will state that the report has been removed by order of the Commandant of the Marine Corps and may not be made available to selection boards and other reviewing authorities; that such boards may not conjecture or draw any inference as to the nature of the report. The Automated Fitness Report System will be corrected accordingly.

3. Since the remainder of your requests do not fall under the purview of this Headquarters, your case is being forwarded to the Board for Correction of Naval Records (BCNR) for final resolution. Further inquiries should be made directly to that agency [Redacted]

[Redacted Signature]
By direction



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

IN REPLY REFER TO:

1070

MIFD

JUN 29 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
 NAVAL RECORDS

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

Encl: (1) Copy of CMC msg 220923Z JUL 96

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

a. Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 960417.

b. Inquiry into the Allegations of Recruiter Misconduct brought against [REDACTED] documents on file in his OMPF.

2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (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 or the Marine's automated record and will be useful to future commanders.

3. MCO 1070.14A, Official Military Personnel Files (OMPF) Contents, 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.

4. 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. 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.

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

5. 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."

6. The following comments/opinions concerning the page 11 entry dated 960417 are provided:

a. The counseling entry does meet the elements of a proper page 11 counseling in that it lists deficiencies, recommendations for corrective action, available assistance, and states that Staff Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, the entry affords 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 Service Record Book (SRB).

b. Staff Sergeant [REDACTED] acknowledged the counseling entry 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 entry in his rebuttal statement since he does not include a copy of that statement in his application and a copy is not available in his OMPF.

c. Staff Sergeant [REDACTED]s claim that the page 11 "was a result of this fitness report," is irrelevant. The event, counseling by his commander, did in fact occur and a page 11 counseling has no correlation with preparation of a fitness report.

7. The following comments/opinions concerning the "Inquiry into the Allegations of Recruiter Misconduct brought against SSgt [REDACTED] documents on file in his OMPF are provided:

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

a. The inquiry into the allegations of recruiter misconduct correspondence on file in Staff Sergeant [REDACTED] OMPF does not meet the guidelines contained in paragraph 5.e(2) of MCO 1070.14A.

b. The relief for cause package on file in Staff Sergeant [REDACTED] OMPF does not meet the guidelines contained in paragraph 5.e(2) of MCO 1070.14A.

c. Enclosure (1) does meet the guidelines contained in paragraph 5.e(2) of MCO 1070.14A for inclusion in his OMPF.

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

a. The Board for Correction of Naval Records disapprove Staff Sergeant [REDACTED] request for removal of the Administrative Remarks (1070), NAVMC 118(11), page 11 entry dated 960417 from his service records.

b. The Board for Correction of Naval Records approve Staff Sergeant [REDACTED] request for removal from his OMPF all documents pertaining to the "Inquiry into the Allegations of Recruiter Misconduct brought against [REDACTED] and the relief for cause package.

c. If the Board for Correction of Naval Records finds that Staff Sergeant [REDACTED] records are in error or an injustice was committed, remove the Administrative Remarks (1070), NAVMC 118(11), page 11 entry dated 960417 from his service records.

9. Point of contact [REDACTED]

Director
Manpower Management Information
Systems Division



UNITED STATES MARINE CORPS
MARINE CORPS RECRUITING COMMAND
3280 RUSSELL ROAD
QUANTICO, VA 22134-5103

IN REPLY REFER TO

1610
G-1
JUL 10 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION ICO STAFF SERGEANT [REDACTED]
[REDACTED] USMC

Ref: (a) BCNR Docket #4133-01

1. We were asked to review Staff Sergeant [REDACTED] petition to the BCNR for correction of his military record, reference (a). After review, we find sufficient evidence to support amending the record as requested.

2. We believe records supporting relief from recruiting duty for good of the service (GOS) or for cause should be included in Marines' Official Military Personnel Files (OMPF). However, we agree with Staff Sergeant [REDACTED] contention that the preliminary inquiry should not be included in his OMPF. Consequently, we support removal of the relief package from Staff Sergeant [REDACTED] OMPF.

[REDACTED]
[REDACTED] Staff

4133-01



UNITED STATES MARINE CORPS

5th BATTALION, 11th MARINES
1st MARINE DIVISION (REIN), FMF, BOX 555534
CAMP PENDLETON, CALIFORNIA 92055-555534

IN REPLY REFER TO

1070
Docket No: 04133-01
22 Sep 01

From: Staff Sergeant [REDACTED] 1 USMC
To: Board for Correction of Naval Records, Department of the Navy
[REDACTED] [REDACTED] DC [REDACTED] 5100

Subj: RESPONSE TO ADVISORY OPINION

Ref: (a) Letter Dated 16 August 2001 from Board of Corrections.
(b) Phone con with Board personal for 30 day extern 10 Sep 01

Encl: (1) Page 11 Rebuttal dated 17 Apr 96

1. Paragraph 6b of the letter sent to me dated 16 Aug 01. States "Staff Sergeant [REDACTED] acknowledged the Counseling entry by his signature". I refused to sign the page 11; however, The Sergeant Major of the RS Denver informed me that if I did not sign the page 11, I would be sent to Office Hours for disobeying a direct order. On April 1996 a huge black cloud covered my career, my family, and myself. I felt by not signing the page 11, I would only make matters worse.
2. A copy of my rebuttal is enclosed for your information. The rebuttal statement was written and submitted on the same day that I signed the page 11. It is unknown as to why it has never been posted to my OMPF.
3. I respectfully submit this response to the Board of Corrections. I trust in your judgement and will accept your decision.

Respectfully Submitted

[REDACTED SIGNATURE]

SEP 25 2001



UNITED STATES MARINE CORPS

RECRUITING STATION
1600 SHERMAN ST., SUITE 500
DENVER, COLORADO 80203-9860

IN REPLY REFER TO

1300/1
ADMIN
17 Apr 96

From: [REDACTED] USMC
To: Commanding Officer, Marine Corps Recruiting Station, Denver

Subj: REBUTTAL FOR PAGE 11 COUNSELING ENTRY DATED 960417

1. I make the following rebuttal statement. I never felt that I disregarded MCO 5300.10A. There were alleged allegations that I did verbally harass three individuals. I was prepared to go to a Court Martial to prove these allegations are completely untrue. I found out on 17 April 1996, when I wrote a statement for my Relief for Cause package that the [REDACTED] Edge Advocate of Western Recruiting Region had determined a Court Martial could not take place because there was not enough evidence.

2. I realize that I cannot go back into these schools, although I have been invited to a graduation ceremony for the Class of 1996 at one of these schools. I believe that the Marine Corps' reputation is still very much intact at the three schools, the NCOIC and Sgt [REDACTED], the other recruiter in RSS Boulder had no problems dealing with these schools, for example getting educational verifications and character references. The main school Longmont High School looks forward to meeting my replacement.

3. I have taken it upon myself to take the corrective action stated in this page 11 entry.

Respectfully Submitted

[REDACTED]

MEMORANDUM FOR THE RECORD
DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: (703) 614-2293 OR DSN 224-2293

DATE: 18DEC01

DOCKET NO. [REDACTED]

PETITIONER (PET): [REDACTED] EMC

PARTY CALLED: [REDACTED], HQMC PERB

WHAT I SAID: I ASKED [REDACTED] THE PERB REMOVED PET'S CONTESTED ADVERSE FITREP.

WHAT PARTY SAID: DAHRIE INFORMED ME THAT THE PERB REMOVED THE CONTESTED RPT BECAUSE OF THE FOLLOWING REASONS: THE CO AND OPS O OF THE RS WERE RFC, CG'S STATEMENT RE SUFF OF EVI, APPEARED TO BE A FITREP IN LIEU OF DIS ACTION, AND STATEMENTS AGAINST PET WERE UNSIGNED.

[REDACTED]