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

SMC
Docket No: 04709-01
20 September 2001

SGT [REDACTED] SMC

Dear 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 September 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 8 June 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. The Board was unable to find you had any medical waiver when you failed the physical fitness test. 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

4709-01

IN REPLY REFER TO:

1610

MMER/PERB

8 JUN 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] USMC

Ref: (a) Sgt. [REDACTED] DD Form 149 of 20 Dec 00
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 June 2001 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970802 to 980228 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that he was unable to complete the physical fitness test (PFT) due to a medical condition. To support his appeal, the petitioner furnishes an extract from his medical record of 24 November 1997.

3. In its proceedings, the PERB concluded that 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 acknowledged the adverse nature of the report (evidence his signature in Item 24) he opted to omit any statement in his own behalf. In so doing, he passively concurred in the accuracy of the report and indicated he had no extenuating or mitigating circumstances to present. The issues the petitioner surfaces in reference (a) should have been raised when he acknowledged the report, and when all parties involved were available to resolve any factual differences. To do so more than three years after the fact lacks both timeliness and credibility.

b. The Reporting Senior was required, by regulation, to record the information reflected in the report. Simply stated, the petitioner failed his semi-annual PFT on 31 October 1997

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(confirmed by this Board's research). To this end, there is no error or injustice.

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.

5. The case is forwarded for final action.

[REDACTED] *AK*

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