



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

BJG  
Docket No: 5808-01  
23 August 2001

SSGT [REDACTED] SMC  
[REDACTED]  
[REDACTED]

Dear Staff 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 22 August 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 20 July 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 probable material error or injustice. In this connection, the Board substantially concurred with the report of the PERB.

Concerning the contested fitness report for 23 April to 18 August 1998, the Board was unable to find that any matters not specifically mentioned were of such significance that they should have been noted. They were likewise unable to find that you were not counseled. In this regard, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, they were not persuaded that the reporting senior and reviewing officer were biased against you, and placed you in a job where you could not be rated against other staff noncommissioned officers, because you made a suggestion on monitoring physical fitness tests.

Regarding the contested report for 30 September 1998 to 23 April 1999, the Board found that it was within your command's discretion to determine whether the incident cited in the report warranted disciplinary action under the Uniform Code of Military Justice.

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  
20 JUL 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] DD Forms 149(2) of 9 Apr 01  
(b) MCO P1610.7D w/Ch 1-6  
(c) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 July 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 980423 to 980818 (TR) - Reference (b) applies
- b. Report B - 980930 to 990426 (CH) - Reference (c) applies

2. The petitioner contends that Report A fails to include information concerning actual duties/accomplishments and infers he should have received specific counseling on performance related to the marks of "excellent." He also points out there was very little actual observation time by either the Reporting Senior or Reviewing Officer. Concerning Report B, the petitioner continues to deny that he attempted to coerce the office secretary into changing the report. To support his appeal, the petitioner furnishes his own detailed statements, copies of the fitness reports, and letters in his behalf.

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. Regardless of the actual number of days of direct observation, the period covered by Report A encompasses 117 days. Hence, the Reporting Senior was required to complete an observed fitness report, unless he justified to the contrary. Notwithstanding the petitioner's statement and the documentation furnished to support his arguments regarding Report A, the Board discerns absolutely no error or injustice. Likewise, they find nothing to show the petitioner did not receive some type of

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performance counseling or that he somehow rated more than what has been recorded.

b. Simply stated, there is nothing to refute the accuracy of Report B. Not only did the Reporting Senior identify the petitioner's lack of integrity in attempting to have the fitness report changed, both the Reviewing and the Adverse Sighting Officers indicated they interviewed persons involved and came to the same conclusion. While Master Sergeant [REDACTED]'s statement is supportive, his "belief" that the situation did not occur as recorded is without substance or merit. He had no firsthand knowledge of the conversation between the petitioner and the office secretary, or the interviews conducted by those officers actually involved in the performance evaluation cycle. Again, the Board discerns neither an error nor an injustice.

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