



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

SMC
Docket No: 00220-01
5 April 2001

SSGT [REDACTED] SMC
[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 5 April 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 January 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 noted the third sighting officer stated he chose not to charge you with dereliction of duty "not because [you] did not violate the UCMJ [Uniform Code of Military Justice], but out of a sense of fairness" as he felt your relief for cause "adequately addressed this issue." 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
9 JAN 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] s DD Form 149 of 5 Oct 00
(b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 December 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990611 to 991214 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the adverse mark in Section D (Mission Accomplishment) is not a true reflection of his performance; that it was assigned as the result of one incident for which he believes he was not responsible. He also alleges the adverse mark in Section E (Initiative) is not accurate; that he was never made aware that an M249 was missing from the armory. The petitioner takes exception with the adverse marks in Section G (Intellect and Wisdom) and states he never used poor judgment. Finally, he believes he rated a higher mark in Item G1 (Professional Military Education) and that the comments contained in Section I fail to accurately portray his performance. To support his appeal, the petitioner furnishes his own statement, copies of Division Orders, and a copy of a FSMAO Report of 29 January 1999.

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. Notwithstanding the documentation furnished with reference (a), the petitioner offers no substantive evidence to refute the accuracy of the challenged fitness report. The arguments tendered are essentially the same as those surfaced in his initial rebuttal statement and which were adjudicated by both the Reviewing Officer and Third Sighting Officer.

b. What is of paramount importance is that not only did the Reporting Senior indicate the petitioner had been counseled, but

(3) PERB

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that the Third Sighting Officer (the Battalion Commander) also stated that he personally counseled the petitioner. The Third Sighting Officer also made it abundantly clear that the petitioner was not relieved as the result of a single incident, but that the particular incident was "...the last and most serious...".

c. The inclusion of the FSMAO Report has no bearing on this appeal. The report was during the previous reporting period and was mentioned in that performance evaluation.

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

5. The case is forwarded for final action.



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