



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

BJG  
Docket No: 6283-02  
9 September 2002

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

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

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

Encl: (1) DD Form 149 dtd 27 Feb 02 w/attachments  
(2) HQMC MMER memo dtd 15 Jul 02 w/encl  
(3) Memo for record dtd 27 Aug 02  
(4) HQMC MI memo dtd 11 Jul 02 less encls  
(5) Memo for record dtd 28 Aug 02  
(6) Subject's ltr dtd 8 Aug 02 w/encls  
(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 "adverse" comments from the fitness reports for 1 April 1996 to 28 February 1997 and 1 March to 1 June 1997, copies of which are in enclosure (1) at Tabs A and B, respectively. In each report, he highlighted comments to which he specifically objected. Concerning the report for 1 April 1996 to 28 February 1997, he also objected that item 17a (commendatory material) was marked "No." As indicated in enclosures (2) and (3), discussed more fully at paragraph 3.b below, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed modifications to both reports. The Board considers the HQMC PERB actions provide Petitioner full relief respecting his fitness report record. He also requested removing the service record book page 11 ("Administrative Remarks (1070)") counseling entries dated 21 July 1993 and 14 January 1997, copies of which are in enclosure (1) at Tabs C and D, respectively.

2. The Board, consisting of Messrs. Geisler and Kim and Ms. LeBlanc, reviewed Petitioner's allegations of error and injustice on 29 August 2002, 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. Enclosure (2), the report of the HQMC PERB in Petitioner's case, shows they directed modifying the fitness report for 1 April 1996 to 28 February 1997 by removing the following reporting senior (RS) comment, the only RS comment Petitioner had highlighted: "However, he displays an inconsistent application in leadership responsibilities as a Marine NCO [noncommissioned officer], at times outstanding in his use of force, initiative and sound judgment, yet other times, has displayed a need for improvement in those very same qualities." They further directed removing the following RS comment, which Petitioner had not highlighted: "With some improvements in his application of force and sound judgment while leading Marines, he will be more than ready for greater responsibilities." They directed completely removing the reviewing officer comments, only one sentence of which Petitioner had highlighted. The memorandum for the record (MFR) at enclosure (3) shows they finally directed amending this report by changing the entry in item 17a from "No" to "Yes." Enclosure (2) further reflects that they directed modifying the report for 1 March to 1 June 1997 by removing the following RS comments, the only comments Petitioner had highlighted: "In the last reporting period, he was counseled for an inconsistency in his application of sound judgment, Marine welfare, and leadership by example." and "However, he still has a tendency to be inconsistent in his handling of enlisted personnel and applying sound judgment."

c. The contested page 11 entry dated 21 July 1993 (Tab C to enclosure (1)) included the following:

...Counseled this date concerning [Petitioner's] refusal to continue as an Airborne Volunteer by refusing to jump while aboard an aircraft engaged in parachute operations. [Petitioner] understand[s] that action will be taken to void [his] additional MOS [military occupational specialty] of 9962 [enlisted parachutist] and to revoke the authority to wear the Navy/Marine Corps Parachutist Insignia. [Petitioner] was advised that within 5 working days after acknowledgment of this entry a written rebuttal could be submitted and that such a rebuttal will be filed on the document side of the service record. [Petitioner chose] (to)...make such a statement...

Petitioner's undated rebuttal stated, in pertinent part, the following:

...I ADMIT that on 19 July 1993, I refused to jump during a parachute operation. I was not manifested to jump that day, however I was slated to take [a staff sergeant]'s spot. Normally, on a CH [Chinook]-53 rotary wing aircraft four Marines with combat equipment make up a stick, but this jump was setup [sic] for five. When I boarded the aircraft at TLZ [Training Landing Zone] Goose I informed the stick leader, [a first lieutenant] that I felt there were unsafe conditions and would prefer not to jump.

The stick leader told me to remain seated when the GREEN light came on and when the command STAND was to be given by the Jump Master. When the aircraft landed I went back to my work section and informed my SNCOIC [staff noncommissioned officer in charge] and OIC [officer in charge] that I felt unsafe to continue as a voluntary jumper. On 21 July 1993, I was counseled about my refusal to jump by the Company Commander [a colonel] and transferred to 8th Communication Battalion...

d. The contested page 11 entry dated 14 January 1997 (Tab D to enclosure (1)), which was not signed by the person who did the counseling, included the following:

...Counseled this date concerning the following defeciencies [sic]: Domestic Disturbances. Specifically, on 961229 [29 December 1996] when Military Police responded. [Petitioner was to] be subject of a Case Review Committee and [he was] advised to complete their recommended programs. Further incidents of Domestic Disturbance may result in a Letter of Disposition of Government Quarters, NJP [nonjudicial punishment] or Administrative Separation. Assistance is available through [Petitioner's] chain of command, the Chaplain and Family Service Center. [He was] advised that within 5 working days of acknowledgement of this entry a written rebuttal may be submitted and filed on the document side of [his] service record book. [He chose] (to)...make such a statement...

Petitioner's undated rebuttal stated, in pertinent part, the following:

...In December 1996, I failed to exercise sound judgment, when an argument ensued after a difference of opinion with my spouse. Subsequently, the Military Police were alerted, and I was removed from my quarters for that evening. There was no actual physical violence incurred to my spouse or myself. Realizing the severity of the situation, I sought guidance from my 1stSgt [first sergeant], which [sic] counseled both my spouse and I [sic]. Days afterwards, we voluntarily attended couples [sic] communication classes aboard the base. These classes allowed us to reconcile our differences and strengthen our family unity. Since this domestic disturbance I have added it to my mentoring toolbox. Furthermore, I have used this incident as a platoon commander/mentor to advocate and heighten junior Marines under my charge about domestic violence...

e. Regarding the contested page 11 entry dated 21 July 1993, Petitioner's application contended that he had been justified in refusing to jump, because he had determined the conditions to be unsafe; that he never actually lost his parachutist MOS; and that the incident did not constitute legally sufficient grounds for voiding this MOS.

f. Concerning the page 11 entry at issue dated 14 January 1997, Petitioner's application argued that after the entry had been made, the case review board found all allegations of domestic disturbance to be "unsubstantiated." In addition, he provided letters from a Marine Corps colonel and major to the effect that this entry should be removed because the review board made an "unsubstantiated" finding, and the incident did not involve domestic violence. He also objected that the entry was not signed by his commanding officer.

g. In correspondence at enclosure (4), the HQMC Manpower Information Systems Field Support Branch, Manpower Management Information Systems Support Division (MI), the office having cognizance over the subject matter of Petitioner's request to remove page 11 entries, has commented to the effect that the entry dated 21 July 1993 should be amended by removing the following sentence: "I understand that action will be taken to void my additional MOS of 9962 and to revoke the authority to wear the Navy/Marine Corps Parachutist Insignia." The reason the HQMC MI gave for removing this sentence was that the entry in which it appears "...does not state the authority for termination and whether the authorization to wear the insignia is revoked." They further recommended accomplishing this relief by drawing a "thin-inked [sic]" line through the sentence. They concluded that the remainder of the entry should stand, as the amended entry properly documents that Petitioner received counseling for his admitted refusal to jump.

h. The HQMC MI opinion at enclosure (4) concluded that the entry dated 14 January 1997 should stand. They concluded that the entry properly documents Petitioner's counseling for an incident where he admitted a failure to exercise sound judgment; and they noted that the applicable directive did not specify the commander must sign a page 11 entry.

i. The MFR at enclosure (5) documents that a member of the Board's staff contacted the HQMC MI to clarify their advisory opinion at enclosure (4) as it relates to the contested page 11 entry dated 21 July 1993. The MFR shows they stated that the basis for their recommendation to remove a sentence from this entry was not only that it failed to state the authority for revoking Petitioner's MOS and right to wear the insignia, but also that the sentence is factually incorrect. The MFR further shows they felt that completely obliterating the sentence would be a more appropriate remedy than merely drawing a line through it, as they had previously recommended.

j. By his letter at enclosure (6), Petitioner resubmitted the two officers' statements concerning the incident that resulted in the contested page 11 entry dated 14 January 1997, together with a new statement from his wife. She stated that she and Petitioner had an argument "about the amount of time he spent doing things for himself," leaving her to tend their two young children. She said that a "concerned party" called the military police, and that Petitioner was told to leave their base quarters for the night. She noted that she and Petitioner would soon be celebrating their 11-year wedding anniversary; and that since the incident, they had "made an addition" to their family.

**CONCLUSION:**

Upon review and consideration of all the evidence of record, and in substantial concurrence with the HQMC MI opinion at enclosure (4), revised as indicated in enclosure (5), the Board finds an error and injustice warranting limited relief. Specifically, they find that the contested page 11 entry dated 21 July 1993 should be revised by removing, in such a way that it cannot be read, the sentence "I understand that action will be taken to void my additional MOS of 9962 and to revoke the authority to wear the Navy/Marine Corps Parachutist Insignia."

In finding that the page 11 entry dated 14 January 1997 should stand, the Board notes that Petitioner's rebuttal clarifies the circumstances of the situation. In addition, they find the subsequent case review committee determination that the case was "unsubstantiated" did not establish there had been no domestic disturbance. To the contrary, the statement from Petitioner's wife substantiates that an argument resulting in military police intervention did occur.

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

**RECOMMENDATION:**

a. That Petitioner's naval record be corrected by removing from the service record page 11 ("Administrative Remarks (1070)") entry dated 21 July 1993 the following sentence: "I understand that action will be taken to void my additional MOS of 9962 and to revoke the authority to wear the Navy/Marine Corps Parachutist Insignia." This is to be effected by reconstructing the page 11 on which the entry appears, or completely obliterating the sentence to be removed so it cannot be read, rather than merely drawing a line through it.

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  
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.

  
W. DEAN PFEIFFER  
Executive Director



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

6283-02

IN REPLY REFER TO:

1610  
MMER  
15 Jul 02

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

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

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 19 Jun 02  
(2) CMC Advisory Opinion 1070 MI of 11 Jul 02

1. As evidenced by enclosure (1), PERB effected corrections to  
Sergeant [REDACTED] fitness reports for the periods 960401 to  
970228 (AN) and 970301 to 970601 (TR).

2. We defer to BCNR on the issue of Sergeant [REDACTED]  
request for the removal of Page 11 entries. Enclosure (2) is  
furnished to assist in resolving that matter.

[REDACTED]

Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
By direction of the Commandant  
of the Marine Corps



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

IN REPLY REFER TO:  
1610  
MMER/PERB  
JUN 19 2002

From: Commandant of the Marine Corps  
To: Sergeant [REDACTED] USMC  
[REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) Your Application for Correction to Military Record  
(DD Form 149) of 27 Feb 02  
(b) MCO 1610.11C

1. This responds to your request contained in reference (a).
2. Per the provisions of reference (b), the Performance Evaluation Review Board has reviewed allegations of error and injustice in your naval record.
3. Having reviewed all the facts of record, the Board has directed that the fitness reports identified below will be modified as indicated:

a. 960401-970228 (AN).

(1) Removal of the following comments from Section C: "However, he displays an inconsistent application in leadership responsibilities as a Marine NCO, at times outstanding in his use of force, initiative and sound judgment, yet other times has displayed a need for improvement in those very same qualities." and "With some improvements in his application of force and sound judgment while leading Marines, he will be more than ready for greater responsibilities."

(2) Removal of the Reviewing Officer's remarks in their entirety.

b. 970301-970601 (TR). Removal of the following comments from Section C: "In the last reporting period he was counseled for an inconsistency in his application of sound judgment, Marine welfare, and leadership by example." and "However, he still has a tendency to be inconsistent in his handling of enlisted personnel and applying sound judgment."

4. Since your request to remove page 11 entries from your Service Record Book does not fall under the purview of this

Subj: CORRECTION OF NAVAL RECORD

Headquarters, your application is being forwarded to the Board for Correction of Naval Records (BCNR) for final resolution. Additional inquiries should be made directly to that agency at (703) 614-9851.



By direction

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  
FACSIMILE: (703) 614-9857 OR DSN 224-9857

MEMORANDUM FOR THE RECORD

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DATE: 27AUG02

DOCKET NO: 6283-02

PETITIONER (PET) [REDACTED], USMC

PARTY CALLED: [REDACTED]

TELEPHONE #: [REDACTED]

WHAT I SAID: I ASKED DAHRIE IF SHE AGREED THAT IN PET'S FITREP FOR 1APR96-28FEB97, THE COMM COR BLK SHOULD BE MARKED "YES" V "NO".

WHAT PARTY SAID: SHE AGREED, AND SAID THAT SHE WOULD DIRECT AN ADMIN CHANGE ACCORDINGLY.



BRIAN J. GEORGE



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

IN REPLY REFER TO:  
1070  
MI  
11 JUL 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

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

- Encl: (1) Copy of Sergeant [REDACTED] Rebuttal Statement for Page 11 entry dated 930721
- (2) Copy of Sergeant [REDACTED] Rebuttal Statement for Page 11 entry dated 970114

1. We reviewed Sergeant [REDACTED]'s application concerning his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 930721 and 970114 from his service records.

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 (SRB), medical records, or the Marine's automated record and will be useful to future commanders.

3. MCO P1080.35H, Marine Corps Total Force System Personnel Reporting Instructions Manual (MCTFSPRIM) provides guidance in reporting incentive pay for hazardous duty involving parachuting duty.

4. MCO P1000.6F, Assignment, Classification, and Travel Systems Manual (ACTS MANUAL) provides guidance in the assignment, revocation, and termination of assignment to duty involving parachuting duty.

5. MCO P1752.3, Marine Corps Family Advocacy Program Standing Operating Procedures (FAP SOP), provides commanders with information on the operation of the Marine Corps' Family Advocacy Program and sets forth policies and procedures for holding offenders accountable for their behavior through administrative or disciplinary action, and rehabilitation, where/when appropriate.

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

6. 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.

7. 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."

8. The following comments/opinions concerning the page 11 entry dated 930721 are provided:

a. The entry appears that Sergeant [REDACTED] commander counseled him concerning qualifications for duty involving parachuting duty after he refused to participate in parachuting. Assignment of this duty involves specific qualifications after completion of an approved basic parachuting course and issuance of orders to engage in parachuting duty per paragraph 1205 of the ACTS MANUAL. Marines assigned to duty involving parachuting are entitled to a monthly monetary incentive and/or special pay and this information must be reported on the Unit Diary per the MCTFSPRIM. Additionally, Marines are eligible to wear the Basic Parachutist Insignia.

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

b. Marines entitled to the monthly monetary incentive and/or special pay must meet a certain level of proficiency maintenance requirements to remain eligible to receive this pay. The page 11 entry appears to be the commander's attempt to follow procedures set forth in paragraph 1207.2 of the ACTS MANUAL where an entry on the Administrative Remarks page 11 is required when a Marine's assignment is revoked. The page 11 entry does not state the authority for termination and whether the authorization to wear the insignia is revoked. However, Sergeant [REDACTED] states in his letter 1070 BCNR dated 10 Apr 02 that he was transferred to another organization one week later. The subsequent transfer appears to be the result of Sergeant [REDACTED]'s refusal to continue as an Airborne Volunteer parachutist and paragraph 1207 of the ACTS MANUAL supports the commander's decision to cancel the orders assigning personnel to parachuting duty when the Marine is transferred to a duty that no longer requires parachuting.

c. Sergeant [REDACTED] states in his rebuttal statement, enclosure (1) above, that he did "refused to jump during a parachute operation."

d. Paragraph 4012 of the IRAM provides guidance in the preparation of a page 11 entry if a Marine has been terminated from the assignment to duty involving parachuting. With the exception of the sentence "I understand that action will be taken to void my additional MOS of 9962 and to revoke the authority to wear the Navy/Marine Corps Parachutist Insignia.", the page 11 entry is an authorized entry per paragraph 4012 of the IRAM.

e. Sergeant [REDACTED] states that the page 11 entry is in error or unjust because they are "unsubstantiated as a result of due process" is not supported by the ACTS MANUAL and the IRAM.

f. Sergeant [REDACTED] commander determined that the information contained in the page 11 entry was of permanent value to his career, thereby documenting this event per the provisions of the IRAM.

g. Sergeant [REDACTED]s commander appears to have followed proper procedures authorized by the ACTS MANUAL and the IRAM in documenting those actions by the preparation of a page 11 entry.

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

9. The following comments/opinions concerning the page 11 entry dated 970114 are provided:

a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found and states that the Marine 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.

b. Sergeant [REDACTED] acknowledged the counseling entry by his signature and further indicated his desire "to" make a statement in rebuttal that is included as enclosure (2) above.

c. Sergeant [REDACTED] acknowledges his failure to exercise sound judgement in his undated rebuttal statement to the page 11 entry.

d. Sergeant [REDACTED] claims that his records are in error or are unjust because the page 11 entry "was never signed by my Commanding Officer" is irrelevant and not supported by the IRAM. The failure of the commander to sign the page 11 entry does not negate those actions taken by the commander, nor nullify a valid entry authorized by the IRAM. Paragraph 4012 of the IRAM requires that the Marine acknowledge (sign) the page 11 counseling entry attesting to the fact that he was counseled, even though he may not agree with the contents of the entry. This version of the IRAM did not specifically state that the commander must sign the page 11 entry. Additionally, Sergeant [REDACTED] rebuttal statement does not address this issue nor does he refute the contents of the page 11 entry.

e. Sergeant [REDACTED]'s commander followed the guidelines contained in the paragraph 1002 of the FAP SOP which states in part commanders are encouraged to hold offenders accountable for their actions through appropriate counseling and administrative and/or disciplinary action. The page 11 entry is an appropriate counseling and administrative action.

f. Sergeant [REDACTED] commander determined that the information contained in the page 11 entry was of permanent value to his career, thereby documenting this event per the provisions of the IRAM.

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

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

a. The Board for Correction of Naval Records disapprove Sergeant [REDACTED]'s request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 930721 and 970114 from his service records.

b. The Board for Correction of Naval Records authorize a partial relief by allowing a pen change method of correction to Sergeant [REDACTED]'s service records by deleting the sentence "I understand that action will be taken to void my additional MOS of 9962 and to revoke the authority to wear the Navy/Marine Corps Parachutist Insignia." from the page 11 entry dated 930721 by drawing a thin-inked line through the sentence.

c. If the Board for Correction of Naval Records finds that Sergeant [REDACTED]'s records are in error or an injustice was committed, approve the removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 930721 and 970114 along with the rebuttal statements from his service records.

11. Point of contact is [REDACTED]

[REDACTED]

Head, Manpower Information  
Systems Field Support Branch,  
Manpower Management Information  
Systems Support Division