



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

SMC  
Docket No: 07271-00  
16 January 2001

SGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

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 11 January 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 23 October 2000 with enclosures, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found 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 were never counseled that you were not mastering the stenograph machine. 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. Further, they found nothing improper about the reviewing officer's comment to the effect that you requested mast to have your failure of the physical fitness test (PFT) excused, but were not granted relief. They found this comment reflected no attempt at reprisal against you for requesting mast; and they found this disclosure of the final disposition of your request mast was proper to respond to your own assertion, in your rebuttal to the contested fitness report, that you should have been medically excused from the PFT.

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

7271-00

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



IN REPLY REFER TO:  
1610  
MMER/PERB  
23 OCT 2000

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) Sergeant [REDACTED] DD Form 149 of 5 Jul 00  
(b) MCO P1610.7D w/Ch 1-3

Encl: (1) Dir JAD ltr 1610 JA3 of 17 Jun 93; Subj: Waiver of  
Performance Evaluation Policy for Reporting Senior  
(2) CMC ltr 1610 MMSB of 6 Aug 93; Subj: Waiver of  
Performance Evaluation Policy for Reporting Senior

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 October 2000 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970301 to 970923 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that due to her impending transfer to Okinawa she was unable to submit her rebuttal until well after her arrival on Okinawa and was never able to meet directly with the Reviewing Officer to discuss the matter. She takes exception to the mark of "frequent" in Item 18 and believes the Reviewing Officer's comments not only contain improper references to Request Mast proceedings and medical information, but that they should have been referred to her for comment. Finally, the petitioner challenges the legitimacy of Master Gunnery Sergeant [REDACTED] designation as her Reporting Senior.

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. While the petitioner argues the "five day" rule for submitting a rebuttal to an adverse report, we note that she actually took in excess of three months to formulate her statement (to wit: Item 24 was signed "970923" and her rebuttal is dated "980113"). Succinctly stated, and regardless that she was unable to personally meet with the Reviewing Officer (which is not a requirement), the petitioner was afforded every consideration.

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Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
SERGEANT [REDACTED] SMC

b. The Board observes the mark of "frequent" to be well within the parameters established by reference (b). Observation is best defined as a "judgment call" on the part of the Reporting Senior. If the Reporting Senior uses an instructor to gain knowledge on the Marine reported on, or travels to the school each Friday to conduct physical training, this can easily be construed as "meaningful contact." The petitioner certainly doesn't prove otherwise.

c. In her rebuttal, the petitioner herself surfaced the issue (in great detail) of her medical condition. To fully and completely adjudicate the matter, the Board finds that then-Colonel [REDACTED] as well within his prerogative in addressing the situation. Additionally, since no new or adverse matters was surfaced, the petitioner was correctly not required to either acknowledge or respond to the Reviewing Officer's comments.

d. The Board takes specific note that Master Gunnery Sergeant [REDACTED] not only functioned as the Reporting Senior for the challenged fitness report, but for the immediately preceding performance evaluation as well (960501 to 970228). Further, Master Gunnery Sergeant [REDACTED] was the Reporting Senior on the petitioner's fitness report for the periods 950914 to 960229 and 960301 to 960430. Consequently, the issue of the Legal Services Chief being the Reporting Senior had been well-established. To further solidify this practice, the Board provides enclosures (1) and (2), which documents a continuing waiver and authorization for the Legal Services Chief of the Marine Corps to function as the Reporting Senior for junior Marines in the stenotype court reporter school.

e. As a final matter, and notwithstanding the petitioner's own statement, we find absolutely no medical documentation with reference (a) to substantiate her claim that her failure of the Physical Fitness Test was due solely to a medical condition.

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.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
SERGEANT S [REDACTED] USMC

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



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, D.C. 20380-0001

IN REPLY REFER TO:  
1610  
JA3  
17 JUN 1993

From: Director, Judge Advocate Division  
To: Commandant of the Marine Corps (Code MMSB)  
Subj: WAIVER OF PERFORMANCE EVALUATION POLICY FOR REPORTING SENIOR  
Ref: (a) MCO P1610.7C

1. This requests a waiver of the standard reporting chain prescribed by reference (a) to permit the Legal Services Chief of the Marine Corps to be the reporting senior for junior Marines in the stenotype court reporter school.

2. The Marine Corps annually selects 10 to 15 Marines (corporals and sergeants) to attend an extensive two-year training program for military stenotype court reporters. These Marines attend the Reporting Academy of Virginia (a civilian court reporting school, located in Springfield, Virginia), and as many as 20 to 30 Marine students are enrolled in this program at any given time. The Legal Services Chief of the Marine Corps, a master gunnery sergeant assigned to the Judge Advocate Division, Headquarters Marine Corps, supervises these Marines, to include monitoring their training progress, conducting inspections, and coordinating necessary administrative support. To insure complete and accurate reporting of these Marines' performance, I seek a waiver of the reference (a) requirement that the reporting senior be the first officer/civilian equivalent in the chain of command in order to permit the master gunnery sergeant to be the reporting senior for these Marines.

3. Because of his frequent contacts with the students, the Legal Services Chief of the Marine Corps is in the best position to evaluate their performance. He has the requisite experience and judgement to be able to fairly evaluate the students' performance. Accordingly, such authorization for the Legal Services Chief to serve as the reporting senior will establish the most efficient and fair performance evaluation arrangement.

4. The reviewing officer will be the Deputy Director, Judge Advocate Division, Headquarters, U.S. Marine Corps.

5. Point of contact is [REDACTED] Deputy Director, Judge Advocate Division, [REDACTED]

ENCL (1)



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, D.C. 20380-0001

1271-00  
IN REPLY REFER TO:

1610

MMSB

AUG 06 1993

From: Commandant of the Marine Corps  
To: Director, Judge Advocate Division, Headquarters,  
U.S. Marine Corps, Washington, DC 20380

Subj: WAIVER OF PERFORMANCE EVALUATION POLICY FOR REPORTING  
SENIOR

Ref: (a) Your ltr 1610 JA3 of 17 Jun 93  
(b) MCO P1610.7C

1. Your request for a waiver in reference (a) to the normal reporting chain outlined in reference (b) is approved.
2. This waiver will remain valid as long as the Legal Services Chief of the Marine Corps remains a master gunnery sergeant or master gunnery sergeant selectee.

  
Director  
Personnel Management Division

ENCL (2)