



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

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BJG
Docket No: 7830-02
4 October 2002

SGT [REDACTED] USMC

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.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested fitness report for 1 February to 6 September 2001 by deleting the next to last paragraph from the reviewing officer (RO) Addendum Page dated 8 January 2002.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 October 2002. 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 30 August 2002, 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 were not counseled about perceived deficiencies, noting the reporting senior (RS) stated, in section D, that you had been counseled several times about problems with your proficiency. In any event, the Board generally does not grant relief on the basis of an alleged absence of counseling, as counseling takes many forms, so the recipient may not recognize it as such when it is provided. While the RS narrative in section G does end with an incomplete sentence, they did not consider this a material error warranting corrective action; they found the narrative that does appear was sufficient to justify the adverse mark in section G.3 ("judgment"). Finally, they noted that the RO

Addendum Page indicated the investigation of sexual harassment allegations against you had been completed, and that you had received formal counseling on 6 September 2001 instead of disciplinary action.

In view of the above, your application for relief beyond that effected by CMC 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

7930-02

IN REPLY REFER TO:

1610
MMER/PERB
AUG 30 2002

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] SMC

Ref: (a) Sgt [REDACTED] DD Form 149 of 29 May 02
(b) MCO P1610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 28 August 2002 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 010201 to 010906 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that at no time was he counseled on any alleged deficiencies; that if he had been, he would have corrected any shortcomings. He also states there were almost four months of "not observed" time from when he was transferred to the Battalion Adjutant's office. To support his appeal, the petitioner furnishes his own statement, an extract from reference (b), letters from Captain [REDACTED] and [REDACTED] and a copy of the challenged fitness report.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. In his statement included with reference (a), the petitioner has done little more than provide another rebuttal to this already properly and thoroughly adjudicated adverse fitness report. While the statements from Captain [REDACTED] and [REDACTED] are supportive, neither individual was in the petitioner's direct reporting chain at the time of the incident. Hence, their observations are not considered germane.

b. While the petitioner may not have received counseling on shortcomings and deficiencies, the Board is haste to observe

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that any individual, whether or not a member of the Armed Forces, should not have to be told that an action such as the one described in the challenged fitness report is simply not condoned. That is nothing more than proper decorum and common sense.

c. The Reviewing Officer's comments (Addendum Page of 8 January 2002) concerning the petitioner's assignment to Headquarters Battalion and his pending transfer are considered inappropriate and not relevant to the overall evaluation. In this regard, the Board has directed elimination of the following verbiage: "Sergeant [REDACTED] remains to be counted against the rolls of the Department of Aviation while working within Headquarters Battalion, Henderson Hall, HQMC pending transfer to Marine Security Guard Battalion, Quantico, Virginia. He is being transferred because the command where he is now working has refused his assignment by MMEA to their command."

d. Should the petitioner desire to document the period of non-availability while he was working in the office of the Battalion Adjutant, he may do so via the procedures outlined in Appendix I of reference (b).

4. The Board's opinion, based on deliberation and secret ballot vote, is that the modified version of the contested fitness report should remain a part of Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3c is considered sufficient.

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