



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

8312-01

92

BJG
Docket No: 8312-01
7 February 2002

GYSGT B [REDACTED] SMCR
[REDACTED]
[REDACTED]

Dear Gunnery 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 removal of the contested fitness report for 15 June to 7 September 1999.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 31 January 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 letter from the Department of Defense Inspector General, dated 28 August 2000, the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 15 November 2001, the advisory opinion from the HQMC Manpower Management Information Systems Division (MIFD), dated 14 December 2001, and the memorandum for the record dated 30 January 2002, copies of which are attached. They also considered your rebuttal letter dated 14 January 2002 with enclosures.

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.

The Board substantially concurred with the comments contained in the report of the PERB in finding that the requested modification of the fitness report for 1 August 1998 to 14 June 1999 is not warranted.

The Board substantially concurred with the advisory opinion from MIFD in finding that the contested service record page 11 counseling entry dated 22 July 1999 should stand. They

found that your having received a nonpunitive letter of caution on 13 July 1999 did not preclude your command from issuing you a counseling entry for the same matter. They found the officer who signed the entry did not have to be present when the matter for which you were counseled occurred. Finally, they found you may, if you wish, submit your 28 July 1999 rebuttal to HQMC (Code MMSB) with a request that it be filed along with the page 11 entry.

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

Enclosures



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

AUG 28 2000

8312-01

MEMORANDUM FOR INSPECTOR GENERAL OF THE MARINE CORPS

SUBJECT: Case Closure--Gunnery

[REDACTED]

We have reviewed the findings of your investigation into Gunnery Sergeant [REDACTED] allegations of whistleblower reprisal, conducted under Title 10, United States Code, Section 1034, and Improper Mental Health Evaluation (MHE) referral in violation of Department of Defense Directive 6480.1. We agree that responsible officials did not reprise against [REDACTED] for making protected communications and concur that his allegation of an improper MHE referral is unsubstantiated.

Please inform [REDACTED] your findings and provide him a redacted copy of the report of investigation as soon as possible. Also provide us a copy of your letter to [REDACTED].

Should you have any questions, please contact [REDACTED] Office of Departmental Inquiries, [REDACTED] 517.

[REDACTED]

Special Inquiries

cc:
Deputy Under Secretary of Defense
(Program Integration), OUSD(P&R)
Attention: Director of Legal Policy



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

IN REPLY REFER TO:

1610
MMER/PERB
15 NOV 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
GUNNERY SERGEANT [REDACTED], [REDACTED] USMCR

Ref: (a) [REDACTED]'s DD Form 149 of 4 Sep 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 November 2001 to consider Gunnery Serge [REDACTED] petition contained in reference (a). Action as indicated was requested on the following fitness reports:

a. Report A - 980801 to 990614 (CH). Removal of Section I comments.

b. Report B - 990615 to 990907 (TD). Removal in its entirety.

Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the comments in Section I of Report A recommending duty with MOS experienced supervision fail to match the Billet Accomplishments listed in Section C. Concerning Report B, the petitioner believes the mark in Item 6b is incorrect; that information regarding his medical condition is in error; and the [REDACTED] was not his Reporting Senior when the alleged e-mail incident occurred. To support his appeal, the petitioner furnishes his own statement and a copy of entries from page 11 of his Service Record Book.

3. In its proceedings, the PERB concluded that:

a. Report A is both administratively correct and procedurally complete as written and filed. Contrary to the petitioner's beliefs, the Board discerns absolutely nothing inconsistent or contradictory between any of the listed billet accomplishments, the marks in Sections D through G, and the comments provided in Section I.

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b. The removal of Report B is warranted and has been directed.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A, as configured, should remain a part of Gunnery 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



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

IN REPLY REFER TO:
1070
MIFD
DEC 14 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

1. Gunnery Sergeant [REDACTED] application with supporting documents has been reviewed concerning his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 990722 from his service records.

2. MCO P1070.12J, 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) or the Marine's automated record.

3. 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."

4. 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.

Subj: BCNR APPLICATION IN THE CASE OF GUNNERY SERGEANT [REDACTED]
[REDACTED] 3 USMCR

5. The Marine Corps Manual, the basic publication of the United States Marine Corps, is issued by the Commandant of the Marine and approved by the Secretary of the Navy. Paragraph 1006.1 of the Marine Corps Manual outlines the application of command and states that any or all of the components of command, operational control, administrative control, coordination, and technical direction, may be assigned to a specific commander. Command responsibility and authority is contained in paragraph 1006.2.

6. The following comments/opinions concerning the page 11 entry dated 990722 are provided:

a. The counseling entry does meet the elements of a proper page 11 counseling in that it lists deficiencies, recommendations for corrective action, where assistance can be found, and states that Gunnery Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, Gunnery Sergeant [REDACTED] was afforded 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 his SRB.

b. Gunnery Sergeant [REDACTED] acknowledged the counseling entry by his signature, and indicated his desire "to" make a statement in rebuttal. Gunnery Sergeant [REDACTED] includes a copy of the rebuttal statement in his application.

c. Gunnery Sergeant [REDACTED] claims that the page 11 entry is unjust because "This entry was completed after higher authority had disposed of the e-mail incident." is not supported by documented evidence in his application. Gunnery Sergeant [REDACTED] commander, in the scope of the office of command, takes precedence over all personnel in the command and exercised appropriate authority per the Marine Corps Manual to initiate or apply authorized disciplinary measures.

d. Gunnery Sergeant [REDACTED] claims that the page 11 entry is in error because "The enclosed rebuttal was submitted and since it had been misplaced, the failure to submit a rebuttal statement was entered." is irrelevant; the event, counseling, did take place. Failure to submit a rebuttal statement does not negate the actions of his commander nor nulify a valid entry authorized by the IRAM. Gunnery Sergeant [REDACTED] indicated his desire to submit a rebuttal statement. Paragraph 4010 of the IRAM states that he will have five working days after referral to return the completed statement for filing in the service record. It is noted that the date of the counter-entry is 20 days after the referral.

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

e. Gunnery Sergeant [REDACTED] claim that his rebuttal statement was misplaced is not supported by documented evidence enclosed in his application.

f. Gunnery Sergeant [REDACTED] contests and explains the page 11 entry.

g. Gunnery Sergeant [REDACTED] commander utilized all available leadership tools as stated in paragraph 3 and 4 above, and followed proper procedures authorized by the IRAM in documenting those actions by the preparation of a page 11 counseling entry.

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

a. The Board for Correction of Naval Records disapprove Gunnery Sergeant [REDACTED] request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 990722 from his service records.

b. If the Board for Correction of Naval Records finds that Gunnery Sergeant [REDACTED] records are in error or an injustice was committed, provide partial relief to his request and authorize the correction of his records by the counter-entry method of correction, deleting as erroneous, the counter-entry dated 990812 and insert his rebuttal statement in his service records per the IRAM.

c. If the Board for Correction of Naval Records finds that Gunnery Sergeant [REDACTED] records are in error or an injustice was committed, remove the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 990722 from his service records.

8. Point of contact [REDACTED]

[REDACTED]

Director
Manpower Management Information
Systems Division

MEMORANDUM FOR THE RECORD

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

DATE: 30JAN02

DOCKET NO: [REDACTED]

PETITIONER (PET): [REDACTED] USMCR

PARTY CONTACTED: [REDACTED] HQMC PERB

WHAT I SAID: I ASKED [REDACTED] WHY THE PERB REMOVED PET'S CONTESTED FITREP.

WHAT PARTY SAID: [REDACTED] INFORMED ME THAT THE REASONS THE PERB REMOVED PET'S CONTESTED FITREP WERE:

IT APPEARED AS IF THE BEGINNING DATE HAD BEEN CHANGED

RELIEF AS ISC WAS SIGNIFICANT

THE RO ADDED NEW ADVERSE MATERIAL AND THE PET DID NOT HAVE THE OPPORTUNITY TO REBUT

A "NO" RPT IN EXCESS OF 60 DAYS SHOULD HAVE BEEN EXPLAINED

NO EVI OF DEROG MAT FROM OUTSIDE COMMAND BUT 6B MARKED "YES"

UNTIMELY SUBMISSION.

[REDACTED]
[REDACTED]
[REDACTED]