



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

BJG
Docket No: 8909-02
7 November 2002

SSGT [REDACTED] JR USMCR
[REDACTED]
[REDACTED]

Dear [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 modified the contested fitness report to delete references to matters that occurred before the reporting period.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 November 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 8 October 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 did not find it a material error that the reporting senior (RS) stated, in section G, that you were relieved for cause after the command inquiry. In this regard, they observed that the reviewing officer (RO) clarified, in section K.4, that he relieved you on the basis of facts on hand on 9 January 2002, "which were later [emphasis added] confirmed by a preliminary inquiry." They were unable to find you were not given an opportunity to review the command inquiry, noting you provided a copy at enclosure (3) to your application. They agreed that the Marine whom your correspondence aided in qualifying for housing was responsible for checking out; however, they found this did not relieve you of the responsibility to determine his status before sending official correspondence. They did not

find persuasive your assertion that the correspondence for which you were taken to task would not have been prepared, but for the failure you allege on the part of your command to provide necessary guidance. On the contrary, they found a Marine of your position and seniority should have known not to proceed as you did. Finally, your unsupported assertions did not convince them that you should have been relieved by the battalion commander, rather than the inspector-instructor (I-I) (the officer who acted as the RO on the contested fitness report), or that your RS should have been the reserve administrative officer, rather than the I-I operations officer.

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

8919-02

IN REPLY REFER TO:
1610
MMER/PERB
OCT 08 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 STAFF
SERGEANT [REDACTED] USMCR

Ref: (a) SS [REDACTED] DD Form 149 of 19 Jul 02
(b) MCO PI610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 2 October 2002 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 011004 to 020109 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends there are inaccuracies associated with the report; that he identified those issues to the Reporting Senior; however, that officer refused to effect changes. The petitioner questions how his relief was accomplished and believes it was a personal issue on the part of the Inspector-Instructor (Lieutenant Colonel [REDACTED]). Finally, the petitioner states that a preliminary inquiry was not conducted until after his relief. To support his appeal, the petitioner furnishes several items of documentary material, to include a copy of the challenged report, a copy of the preliminary inquiry, and advocacy letters.

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

a. Contrary to the petitioner's assertions, and notwithstanding the data included with reference (a), the Board finds nothing to prove that the petitioner's relief was anything other than a result of his demonstrated performance. [REDACTED] states as follows: "SNM says he did not know the status of the Marine; if so, SNM was derelict in not determining the status before sending official correspondence; likewise SNM's judgment in exercising his authority to sign correspondence under these

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

circumstances without command guidance was also flawed." In his rebuttal, the petitioner acknowledges that he had knowledge of Sergeant [REDACTED] request for early release. As the Personnel Administrative Chief, and being aware of the situation, one would have to ask why he did not follow up and research the matter.

b. The Board observes that the petitioner was also well aware that Sergeant [REDACTED] was more than likely going to be approved for early separation since he was on terminal leave when the letter to the housing office was drafted. Further evidence of this fact is gleaned from the following comments made by Lieutenant Colonel [REDACTED] in his 11 January 2002 statement contained in enclosure (4) to the Preliminary Inquiry of 18 January 2002: "Although on November 27, 2001 (the date Staff Sergeant [REDACTED] faxed the letter to housing) the command had not received official notification "in writing" that Sergeant [REDACTED]'s would separate on 6 January 2002, Staff Sergeant [REDACTED] was aware of this date. In fact most, if not all of the Marines and Sailors on the I&I staff, knew that Sergeant [REDACTED] was on terminal leave. Thus, Sergeant [REDACTED] had no orders to "modify". Staff Sergeant [REDACTED] assertion that the orders were "modified" to extend his tour ...until 10 August 2002" was patently and knowingly false."

c. The advocacy letters furnished with reference (a), although supportive, in no way substantiate the petitioner's contention that the report at issue is either inaccurate or unfair.

d. The Board concludes that the comments in Section I (Reporting Senior's Addendum Page of 25 Jan 02) concerning a prior situation involving Sergeant [REDACTED] are inappropriate since this occurred during a prior reporting period. They do not, however, find that removal of the report is either necessary or warranted. Instead, the Board has directed elimination of the following verbiage:

(1) From [REDACTED] Addendum Page (Section I continuation) completed by Maj [REDACTED] on 25 Jan 02: "A message dated 261307Z Mar 01 indicated that the same Marine was to

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

execute Permanent Change of Station Orders, however, SNM failed to properly supervise Marine's PCS transfer to MarForRes or notify HQMC of this Marine's unwillingness to reenlist in order to execute his orders. As a consequence, the Marine never executed PCS orders and remained on station until his EAS."

(2) From the Addendum Page (MRO Statement) completed by SSgt [REDACTED] 14 Feb 02 (Page 2 of 3): The final two paragraphs in their entirety (i.e., beginning with "The third is, . . ." and "I have been at. . .")

(3) From the Addendum Page (MRO Statement) completed by SSgt [REDACTED] 14 Feb 02 (Page 3 of 3): The first two sentences in their entirety (i.e., "We receive messages under the PLAD "SECONDBN TWO FIVE MAR. The copy of the message we received concerning [REDACTED] orders was faxed to this command by HQMC (RAM-2).")

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Staff Sergeant [REDACTED] official military record. The corrective action identified in subparagraphs 3d(1), 3d(2), and 3d(3) are 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