



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

2/

BJG
Docket No: 2761-03
22 October 2003

GYSG [REDACTED] BMC
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 October 2003. 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 28 March 2003, 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, before receiving the contested fitness report, concerning the incident cited in the report. 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. 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

2761-03



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

IN REPLY REFER TO:

1610
MMER/PERB
MAR 28 2003

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 ██████████ USMC

Ref: (a) GySgt ██████████ DD Form 149 of 6 Nov 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 26 March 2003 to consider Gunnery Sergeant ██████████ petition contained in reference (a). Removal of the fitness report for the period 991001 to 000930 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the comments in Section I concerning his leadership and judgment are inconsistent with the "adequate" markings in Sections F and G. In addition, the petitioner states he was not properly counseled or given an opportunity to correct the stated deficiencies, and that the report was used as a counseling tool. To support his appeal, the petitioner furnishes his own statement.

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. At the outset, the Board stresses that when the petitioner acknowledged and responded to this adverse evaluation, he accepted full responsibility for his "personal shortcoming" (his phrase) and indicated he would accept the situation as a "learning experience" (again, his phrase).

b. Contrary to the petitioner's beliefs, the Board discerns absolutely nothing inconsistent between any of the assigned markings in Sections D, E, F, and G and Section I comments. It is clear from the Reporting Senior's comments in Section I that the petitioner learned from his mistake, regained control, and continued to set high standards and lead by example. While there were obviously errors in the handling of funds (bank

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deposits), the Reporting Senior evidently opined that the situation did not warrant any marks of "A." In this regard, the Board discerns absolutely no error or injustice.

c. It is the position of the PERB that to justify the deletion or amendment of a fitness report, evidence of probable error or injustice should be produced. Such is simply not the situation in this case.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report 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