



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

JSR
Docket No: 6585-08
28 August 2008

[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 28 August 2008. 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 undated report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), 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 further noted that section K.6 of the contested fitness report shows the reviewing officer comments were "Provided to MRO [Marine reported on], no response." 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



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

IN REPLY REFER TO:

1610
MMER/PERB

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
[REDACTED]

Ref: [REDACTED] DD Form 149 of 28 Mar 08
(b) MCO P1610.7F

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 11 June 2008 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 20080101 to 20080116 (FD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner received this adverse fitness report for failing a Physical Fitness Test (PFT). He now requests that it be expunged due to procedural inaccuracies. In support of his appeal, he submitted an excerpt from reference (b).

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

a. The petitioner argues that he was never afforded an opportunity to review, or rebut this report after the Reviewing Officer completed Section "K". He included an excerpt from reference (b) that he implies supports his argument. The Board found that the petitioner does not seem to fully understand this section of reference (b). Paragraph 4014.2f(2) of reference (b) states, "... no requirement exists for the RO to refer an adverse report for section "K-6" signature if the MRO indicated 'no statement to make' in section "J-2" and "K-1" is marked insufficient; ... and adds no new adversity in review comments." That is clearly the situation with this fitness report.

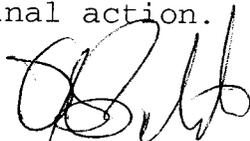
b. The petitioner does not deny that he failed a PFT but bases his appeal on procedural errors that do not exist. The

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Board found this report to be an accurate record of the petitioner's PFT failure, and as such, it is a valid report.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED] official military record.

5. The case is forwarded for final action.



FRANCES S. POLETO
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps