



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

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BJG  
Docket No: 9108-08  
17 October 2008

[REDACTED]

[REDACTED]

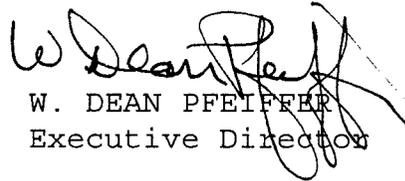
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 October 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 report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 18 September 2008, 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. Accordingly, 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  
SEP 18 2008

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

Ref: [REDACTED] Form 149 of 11 Jun 08  
(b) MCO P1610.7E w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 13 August 2008 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 20020104 to 20020521 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner received an adverse fitness report for his second, substantiated Level III Domestic Violence incident. In support of his appeal he submitted copies of civilian court documents.

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 this fitness report was completed prior to him being tried in civilian court, during which his case was dismissed. As such, he argues that the report was used as a counseling tool. He also states that Family Advocacy substantiated "against" him before receiving the civilian court ruling.

b. This fitness report was based on the petitioner's substantiated Level III Domestic Violence as reported by Family Advocacy. Any related civilian charges have no bearing on this fitness report.

c. The Board found that the petitioner has provided no evidence to indicate that the report was used as a counseling tool. The Board concluded that this report appropriately reports

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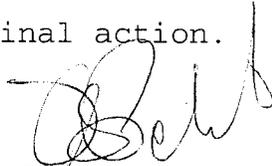
[REDACTED]

the petitioner's substantiated Level III Domestic Violence in accordance with paragraph 4003.6 b (1) (e) of reference (b). It is clearly stated by the reviewing officer that the commanding officer determined the petitioner to be culpable.

d. Finally, the Board notes that the petitioner chose not to submit a rebuttal to this report thereby accepting its accuracy.

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

5. The case is forwarded for final action.



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