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

BJG  
Docket No: 10437-08  
12 February 2009

[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.

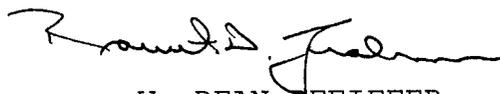
It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested fitness report for 31 March to 30 September 2002 by deleting, from section K.4 (reviewing officer's comments), "a non-punitive letter of caution,".

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 12 February 2009. 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 27 October 2008, a copy of which is attached. The Board also considered your rebuttal letter dated 22 November 2008 with enclosure.

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 the request mast at enclosure (1) to your rebuttal letter dated 22 November 2008 persuasive, noting that while the "Disposition" acknowledged the fitness report at issue was "not a good report," it reflected no finding that the report was anything other than fair and accurate. 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,

  
For 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  
OCT 27 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  
[REDACTED]

Ref: (a) [REDACTED] DD Form 149 of 2 Sep 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 15 October 2008 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report covering the period 20020331 to 20020930 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner received this adverse fitness report for being relieved of his primary duties for lacking basic leadership skills and failure to take responsibility for his platoon. He did not submit any evidence in support of this appeal.

3. In its proceedings, the Board concluded that the report contains a minor, correctible error, but is otherwise administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner argues that the report was unfair, unjust and written with the intent to impede his promotion potential. However, he has provided absolutely no supporting documentation to substantiate that claim.

b. The Board found that the Section K comments include an inappropriate reference to a nonpunitive letter of caution (NPLOC) which is strictly prohibited by reference (b). As such, the Board has directed that the phrase, "a non punitive letter of caution", be expunged from the report.

c. The Board found that the report is an appropriately written and submitted adverse report that was thoroughly adjudicated. The petitioner has not met his burden of proof that this report should be expunged from his record.

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

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report covering the period 20020331 to 20020930 (CD), with modifications as noted, 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  
Manpower Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps