



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

SMC
Docket No: 00211-99
4 June 1999

MR [REDACTED]
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 June 1999. 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 20 January 1999, 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. They were unable to find the operations manager provided the reporting senior erroneous or unjust input for use in your contested fitness report. They found no inconsistency between the reporting senior's comment on your additional duties and the mark of "not observed" in item 13b ("additional duties"). In this regard, they noted that Marine Corps Order P1610.7D, paragraph 4004.2 states this block is marked other than "not observed" when additional duties require the Marine to "devote prolonged periods of time to such duties." You have not established that you had to devote prolonged periods of time to your administrative duties. 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

0211-99

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



IN REPLY REFER TO:
1610
MMER/PERB
JAN 20 1999

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
SERGEANT [REDACTED], [REDACTED], USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 1 Sep 98
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 15 January 1999 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970301 to 980127 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the "outstanding" comments contained in the Section C narrative are inconsistent with the "excellent" ratings in Section B. Additionally, he believes that reference in Section C to his duties as the Hazardous Material/Waste NCO warranted an observed mark in Item 13b (additional duties). To support his appeal, the petitioner furnishes statements from officers and staff noncommissioned officers with whom he has worked during the period in question.

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. The narrative comments portray highly satisfactory accomplishment of duties. Nothing within those comments contradict the ratings assigned in Section B; nor do they imply that the petitioner was deserving of anything higher. Simply stated, the Board discerns absolutely no inconsistency between any of the marks assigned in Section B and the comments contained in Section C. That the petitioner and others may believe otherwise is a matter of differing opinions.

b. In his letter appended to reference (a), the Reporting Senior states that the Section C comments reflect a true observation of the petitioner. However, in that same letter, [REDACTED] now believes the report was "career ending and not my true intentions." The fact that the Reporting Senior may now have had a change of heart about how he recorded the petitioner's performance has no impact on the validity of the overall evaluation.

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The Reporting Senior has failed to prove or document that his initial evaluation was written in error or based on false information.

c. The other advocacy letters, although supportive, do not negate the fitness report at issue. As a final matter of information, there is no fitness report in the petitioner's official military personnel file authored by Captain [REDACTED]. The latest performance evaluation is the one for the period 980301 to 980527, completed by Captain [REDACTED].

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