



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

SMC
Docket No: 01970-99
19 August 1999

GYSGT [REDACTED] USMC
[REDACTED]
[REDACTED]
[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. You requested removal of two fitness reports, for 18 January to 20 May 1996 and 23 September 1997 to 26 January 1998.

It is noted that the Commandant of the Marine Corps (CMC) has removed the reviewing officer's comments from both reports.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 August 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 16 March 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 warranting further corrections. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. 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,

W. DEAN PFEIFFER
Executive Director

Enclosure



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

1970-99

IN REPLY REFER TO:
1610
MMER/PERB
MAR 16 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 STAFF
SERGEANT [REDACTED], USMC

Ref: (a) SSgt. [REDACTED]'s DD Form 149 of 20 Oct 98
(b) MCO P1610.7D
(c) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 March 1999 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 960118 to 960520 (CH) -- Reference (b) applies
- b. Report B - 970923 to 980126 (TR) -- Reference (c) applies

2. The petitioner contends that certain comments made by the Reviewing Officer in his remarks in Report A are derogatory. Likewise, he challenges comments made by both the Reporting Senior and Reviewing Officer in Report B. It is his position that he should have been afforded his rightful opportunity to respond to both appraisals and ensured a review by a third officer. The petitioner also infers that both reports were used as counseling tools.

3. In its proceedings, the PERB concluded that:

- a. As contended, the Reviewing Officers' comments included with both reports should have been referred to the petitioner for official acknowledgment and the opportunity to respond. The Board concludes that the removal of both sets of Reviewing Officer comments is warranted and has so directed that action.

- b. Contrary to the petitioner's argument, the Board discerns nothing derogatory or inconsistent in the evaluations by either First Lieutenant [REDACTED] (Report A) or First Lieutenant [REDACTED] (Report B). Likewise, they find nothing to corroborate the petitioner's inference that the reports were somehow utilized as "counseling tools."

- c. While the 12 advocacy letters furnished with reference (a) certainly speak well of the petitioner, the Board is quick to

(3) PERB

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

point out that all of those documents were issued as endorsements of the petitioner's qualifications for promotion to the grade of Gunnery Sergeant, and not as an attempt to invalidate the fitness reports at issue.

d. Colonel [REDACTED] letter of 23 October 1998 is also supportive from his position as the petitioner's current Battalion Commander. However, the Board disagrees with his "interpretation" that both reports are "derogatory" and should be expunged from his record. By eliminating the Reviewing Officer's remarks from both reports, the Board has removed the "derogatory" comments without invalidating the complete reports.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports, as modified, should remain a part of Staff Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3a is considered sufficient.

5. The case is forwarded for final action.

[REDACTED]

D. [REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps