



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 1983-99
15 April 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, 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 8 April 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 18 March 1999, a copy of which is attached. They also considered your rebuttal letter dated 29 March 1999 with enclosures.

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 found one of the provisions you cited, Marine Corps Order (MCO) P1610.7D, paragraph 2007.6d, is inapplicable, since this order was effective 1 April 1995, while your contested fitness report ended 13 June 1994. The applicable directive, MCO P1610.7C, paragraph 2006.6.a, provides for a one-time modification by the commanding general of the reporting chain when "unusual operational circumstances dictate." However, they were unable to find such circumstances prevailed in your case. They were not persuaded that your reporting senior (RS) was biased against you.

The Board found another provision you cited, MCO P1610.7D, paragraph 3009.2, is inapplicable for the reason stated above. The applicable directive, MCO P1610.7C, paragraph 3004.7.a(1), authorizes "DC" (directed by the Commandant of the Marine Corps

(CMC)) fitness reports in cases where the RS "...believes that a single...adverse action by the MRO [Marine reported on] is so significant that it should be reported immediately to the [CMC]." They were not convinced that your RS was incorrect in finding that the action for which you received your civil conviction warranted submission of a "DC" report. They found no requirement that the incident cited in the contested report be alcohol-related to justify a "DC" report.

The Board was unable to find that your contested fitness report was used as a disciplinary tool, a lever to exert influence, or a counseling document. They were likewise unable to find that you were not counseled on your perceived deficiencies. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided.

The applicable directive, MCO P1610.7C, paragraph 5001.2.g(1), states that an "[RS] must never damn with faint praise..." However, the Board found no violation of this rule in your RS's comment that you "...can effectively set the example for junior Marines when asked to do so."

The Board was unable to find that your RS was incorrect in stating that you had "lapses of judgment outside of work," despite your denial of such lapses.

The Board found your having stated, in your rebuttal to the contested fitness report, that you were involved in a traffic accident, whereas your RS stated that you had a "traffic arrest," was not a material factual disagreement requiring reviewing officer adjudication.

If you are correct that the "civil conviction" in question did not meet the definition of that term in MCO P1610.7C, paragraph 4006.7.a, which addresses when to mark item 17c (disciplinary action) "yes," the Board found the proper remedy in the event of an error would be to change the mark in item 17c from "yes" to "no". They found that this would not be a material corrective action in an otherwise adverse report which properly mentions a civil conviction.

Finally, the Board was unable to find the officer who acted as your third sighting officer was not in your normal fitness reporting chain, or if he were not in the normal chain, that he acted without proper authority.

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, VIRGINIA 22134-5103

1993-49
IN REPLY REFER TO:
1610
MMER/PERB
MAR 18 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] DD Form 149 of 14 Dec 98
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 9 March 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 931222 to 940613 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report contains substantive inaccuracies and represents an injustice. It is the petitioner's claim that during the period covered by the report, the Commanding Officer (Reviewing Officer) was also involved in an alcohol-related incident that was not reported to the Marine Corps Security Force Battalion Commander. Instead, it was reported to the operational commander (Commander, U. S. Naval Activities, United Kingdom). He states that he surfaced this issue to the Executive Officer (Reporting Senior), but was led to believe that his behavior toward the Commanding Officer was tantamount to jeopardizing that officer's career. The petitioner cites several provisions of reference (b) in arguing for elimination of the report, to include that portion which states that fitness reports will not be used as disciplinary tools.

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. Regardless of the petitioner's disagreement with the methods used to obtain a sufficient specimen for a breathalyzer, the fact remains that he was the subject of a civilian conviction during the reporting period. That is an uncontroverted matter of fact and nothing furnished with reference (a) disputes that issue. In this regard, the Board stresses that the military must follow the laws of the country in which they are stationed. This is precisely what occurred in the petitioner's case.

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b. The petitioner's statement that the Commanding Officer had a DUI during the reporting period does not change the facts pertaining to his own situation. The Board notes that there are no third-party statements to corroborate either that allegation or the contention of reprisal. In fact, in his statement appended to reference (a), the petitioner specifically stated that the allegation of reprisal was not substantiated.

c. To justify the deletion or amendment of a fitness report, evidence of probable error or injustice should be produced. Notwithstanding the petitioner's statement, there is simply no such showing in this case.

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

5. The case is forwarded for final action.

[REDACTED SIGNATURE]

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