



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 03760-99

26 August 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 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 26 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 (HQMC) Performance Evaluation Review Board (PERB), dated 7 June 1999, and the memorandum furnished by HQMC dated 25 August 1999, copies of which are 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 report, as amended by the memorandum dated 25 August 1999.

The Board was unable to find the reviewing officer or the third sighting officer violated the prohibitions against using the fitness report as a counseling tool, or reporting on the basis of conjecture rather than fact. They found the unfavorable matter the reviewing officer and the third sighting officer cited was significant enough to warrant mention. Finally, while the report of the inspection cited by the reviewing officer and third sighting officer, a copy of which is at enclosure (2) to your application, did not include specific findings, the Board found it supported both the reviewing officer's conclusion that the inspection found the adjutant shop "not mission capable in several areas" and the third sighting officer's statement that "The inspector's impression was that there was at least two years of neglect in the adjutant's shop."

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

3760-99

IN REPLY REFER TO:
1610
MMER/PERB
JUN 7 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 17 Mar 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 2 June 1999 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 980418 to 980930 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner takes exception with the actions of the Reviewing Officer and believes that officer's limited observation precluded a fair and accurate assessment. To support his appeal, the petitioner furnishes copies of the report at issue, an "After-Action Report" detailing the results of a courtesy inspection, extracts from reference (b), and a letter from First Sergeant [REDACTED].

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. In his statement, the Reviewing Officer identifies his period of observation and his comments are qualified in that context. As stipulated in reference (b), the petitioner was provided an opportunity to acknowledge and respond to Major [REDACTED] comments. He availed himself of that right and surfaced his concerns and disagreements.

b. What is of paramount importance in this situation is the thorough and detailed adjudication by the Adverse Sighting Officer (Lieutenant Colonel [REDACTED]). Not only were the petitioner's disagreements found to be without merit, but Lieutenant Colonel [REDACTED]'s observations spanned the entire period covered by the report (plus an additional six weeks prior to the commencement of the reporting period). As such, and especially considering his billet as the Commanding Officer, he was in a position to evaluate and comment on the matter from a

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

most credible vantage point. We also note that the petitioner declined to respond to Lieutenant Colonel [REDACTED] remarks.

c. First Sergeant [REDACTED] advocacy letter offers some explanations into the petitioner's shortcomings. However, it is no excuse for the deficiencies documented by the Reviewing Officer and Adverse Sighting Officer.

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] 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

3760-99



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

IN REPLY REFER TO:

1610
MMER
25 Aug 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Ref: (a) Conversation btwn [REDACTED] (BCNR) and [REDACTED]
[REDACTED] (HQMC, MMR) on 25 Aug 99
(b) My Memo for BCNR 1610 MMR/PERB of 7 Jun 99

1. This Memorandum will confirm the conversation identified in reference (a) and serve to clarify a misstatement contained in reference (b).

2. Contrary to the information included in subparagraph 3b of reference (b), further research indicates that the Adverse Sighting Officer (Lieutenant Colonel [REDACTED] on petitioner's fitness report for the period 980418 to 980930 (DC) did not have observation during the "...entire period covered by the report (plus an additional six weeks prior to the commencement of the reporting period)." I cannot offer a definitive explanation why such information was initially provided, and can only speculate that notes from another case may have been close at hand. Nevertheless, subparagraph 3b of reference (b) should read as follows:

"b. What is of paramount importance in this situation is the thorough and detailed adjudication by the Adverse Sighting Officer (Lieutenant Colonel [REDACTED]). Not only were the petitioner's disagreements found to be without merit, but given Lieutenant Colonel [REDACTED] billet as the Commanding Officer, he was in a position to evaluate and comment on the matter from a most credible vantage point. We also note that the petitioner declined to respond to Lieutenant Colonel [REDACTED] remarks."

3. Sincerely regret any confusion caused by this error.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
By direction of the Commandant
of the Marine Corps