



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

BJG
Docket No: 1547-00
17 August 2001

MAJ [REDACTED] USMC
[REDACTED]

Dear Major [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.

Your request for orders to attend the Marine Corps Command and Staff College in July 2000 was not considered, as that date has passed.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 August 2001. 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 24 February 2000, a copy of which is attached. They also considered your rebuttal letter dated 16 March 2000.

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.

The Board found that the contested fitness report for 5 August to 2 October 1998, which documented your relief for cause, should stand. They did agree with you that the PERB misunderstood your contention, in that you do not allege your commanding officer (CO) pressured you to change your subordinate's fitness report. However, they otherwise substantially concurred with the PERB report. They duly noted your objections to the investigation in your case, but they found it an uncontroverted fact that you knowingly submitted a materially false fitness report. Even accepting as correct your assertions as to your reasons for this action, they found your relief for cause for loss of confidence in your ability to lead your Marines was justified. They found your action reflected against both

your integrity and judgment. They further found that even if you were correct that you did not give a false statement to the investigating officer, as the contested relief for cause report alleges you did, it would not be a material correction to amend this otherwise adverse report by deleting reference to that allegation.

Since the Board found insufficient basis to remove the fitness report for 5 August to 2 October 1998, which documented your relief for cause as a CO, they had no grounds to remove the "not observed" report for 3 October to 25 November 1998, which effectively revealed your relief by showing that at the same station where you had served as a CO, you were assigned duty as a special projects officer. Finally, as they did not find the relief for cause report warranted removal, they had no grounds to issue you orders to attend an upcoming Command and Staff College class.

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

1547-10

IN REPLY REFER TO:
1610
MMER/PERB
24 FEB 2000

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
MAJOR [REDACTED] SMC

Ref: (a) Major [REDACTED] D Form 149 of 9 Nov 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 16 February 2000 to consider Major [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 980805 to 981002 (CD)
- b. Report B - 981003 to 981125 (TR)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends the reports are unjust, substantively inaccurate, and in violation of reference (b). To support his appeal, the petitioner supplies, via his legal counsel, a lengthy brief in support of his application, as well as 16 attachments which he believes will substantiate his claims.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed.

a. The petitioner mistakenly believes that since he was not taken to a court-martial for resolution of his actions, he was therefore not guilty of any offenses under the Uniform Code of Military Justice (i.e., no basis for his relief for cause). The decision to refer a particular instance of misconduct to disciplinary proceedings rests within the discretion of the Commanding Officer. At the same time, misconduct that does not rise to the level of disciplinary action may still warrant comment in a fitness report. This is particularly so when it reflects on a Marine's performance of duty, potential, or professional character. In this case, disciplinary action was evidently deemed unnecessary and the performance evaluation system was properly used to officially record **factual** information

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relevant to and impacting on the petitioner's potential and professional character. While neither poor judgment nor a compromise of integrity are crimes punishable under the UCMJ, they definitely form a basis for relief for cause.

b. The investigation into alleged irregularities and falsified information surrounding the fitness report of a subordinate offers more than ample proof of the petitioner's poor judgment and indiscretions. The report at issue is not about the UCMJ, but a lack of integrity and judgment.

c. The petitioner's argument that he received undue pressure and was somehow intimidated into changing the fitness report on his Marine [REDACTED] has no proven basis. Regardless, the petitioner--as a Reporting Senior--had an obligation and responsibility to honestly and factually record information. When he signed Item 23 on Sergeant [REDACTED] fitness report, the petitioner attested to it's truth and accuracy. That is when he ultimately compromised himself.

d. As the Reviewing Officer and Commanding General, Major [REDACTED] thoroughly examined and adjudicated this entire situation. Succinctly stated, and notwithstanding the arguments/documents contained in reference (a), there is no substantiation the petitioner was unjustly relieved or unfairly evaluated.

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

5. The case is forwarded for final action.

[REDACTED SIGNATURE]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps