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

SMC  
Docket No: 02721-01  
28 June 2001

GYSGT [REDACTED] USMC  
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 June 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 3 April 2001, a copy of which is attached, and your letter dated 10 May 2001 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.

The Board did not find the contested fitness report to be internally inconsistent. They found the incident cited adequately explained the one adverse mark, assigned in "judgment." They likewise did not find the reviewing officer contradicted himself: while he did indicate concurrence with the marks the reporting senior assigned you in items 15a and b, concerning "general value to the service," he did not say he agreed with the reporting senior's conclusion that you were qualified for promotion. The Board found the incident cited, described by your service record page 11 counseling entry, the reporting senior and the third sighting officer as "minor," was nevertheless important enough to warrant mention in the contested fitness report. In this regard, they noted it was the basis for the adverse mark assigned and, therefore, had to be mentioned. The Board considered your compliance with regulations to be a matter relevant to your performance. They did not feel the mark in judgment was unduly harsh. They found the third sighting officer adequately adjudicated the

matters you raised in your responses to the reporting senior and reviewing officer: specifically, he clarified that you had only one unfavorable incident, that your conduct was not "criminal" and that the pyrotechnics you possessed were of civilian manufacture. The Board was unable to find the pyrotechnics you possessed were not the kind whose possession on the reservation was prohibited by Air Station Order 5510.15B, paragraph 10. They did not find it objectionable that the reporting senior expressed his opinion that the incident was probably of a "one-time" nature, nor did they object to the reviewing officer's statement to the effect there is no way to know whether it was a one-time incident. The tone of the reviewing officer's comments did not convince the Board that his assessment was personal rather than professional. Finally, they were unable to find the contested fitness report was influenced by those whom the third sighting officer mentions as having favored stronger action against you.

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

IN REPLY REFER TO:  
1610  
MMER/PERB  
3 APR 2001

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  
GUNNERY SERGEANT [REDACTED] SMC

Ref: (a) GySgt [REDACTED]s DD Form 149 of 15 Oct 00  
(b) MCO P1610.7D w/Ch 1-4

Encl (1) Copy of Completed Report 971101 to 980430 (TR)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 11 January 2001 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 971101 to 980430 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the Reviewing Officer's comments are adverse, inaccurate, and unfounded. He cites those comments as derogatory accusations that unfairly detract and question his integrity, loyalty, and overall performance. In furtherance of his appeal, the petitioner provides his perspective into the incident that served as the genesis for the adversity and provides several items of documentary material.

3. In its proceedings, the PERB concluded that:

a. As the petitioner contends, the Reviewing Officer's comments are adverse. They also add new and additional unfavorable matter, which was not previously identified by the Reporting Senior. As such, the petitioner should have been afforded an opportunity to acknowledge and respond to those comments. Owing to the relative recency of the report at the time the PERB first considered reference (a), and especially in view of the serious nature of the adversity, the Board found that offering the petitioner a chance to now respond to Major [REDACTED] comments would be an acceptable remedy. All referral action has been completed, to include sighting and comment by the Third Sighting Officer.

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

b. In reviewing the entire package, and not withstanding the petitioner's insight into the events and circumstances during the reporting period, the Board finds absolutely nothing to show that he was not properly, fairly, or accurately evaluated. In this regard, the Board invites attention to the Third Sighting Officer's complete adjudication and resolution of all factual differences, either perceived or real.

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