



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 02794-00

17 August 2000

MR [REDACTED]
[REDACTED]
DL [REDACTED]
[REDACTED]

Dear [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 16 August 2000. 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 17 April 2000, 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. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board did not agree with your contention that the reviewing officer's comment to the effect your relief negatively affected morale and placed a burden on other Marines was speculative. They were unable to find the reporting senior and reviewing officer allowed your involvement with civil authorities to affect their evaluation of other aspects of your performance. The documentation you provided reflecting good performance as a recruiter did not convince the Board that the reviewing officer was wrong to indicate that your civil involvement harmed your ability to function as a Marine staff noncommissioned officer, or that you had "poor recruiting performance" after that involvement. In this regard, they particularly noted that you were sentenced on 19 May 1993, after your favorable recruiter evaluation on 22 March 1993. Finally, they found no requirement for the reporting senior or reviewing officer to provide evidence to support their comments.

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
17 APR 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
FORMER MARINE STAFF SERGEANT [REDACTED], JR.,
[REDACTED]

Ref: (a) [REDACTED] DD Form 149 of 16 Feb 00
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 April 2000 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 921016 to 930611 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner believes the report contains both policy and procedural errors, substantive inaccuracy, and injustice. It is his contention that the comments made by Lieutenant Colonel [REDACTED] (the Reviewing Officer) added new adverse material, thereby necessitating referral to him for comment. He points out that this action never occurred and the report was never sighted by a third officer. Additionally, the petitioner argues that the reporting officials both referred to a civil action that was in the appellate process as of the ending date of the report. To support his appeal, the petitioner furnishes several items of documentary evidence.

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 comments on the fitness report, the Reviewing Officer indicated that he spoke with the petitioner on 28 July 1993 concerning the missing rebuttal. At that time Lieutenant Colonel [REDACTED] as advised by the petitioner that a rebuttal would not be submitted until the civil action had been completed. Said rebuttal never materialized and the report was received at this Headquarters without the Standard Addendum Page or Third Officer Sighting. It is clear from the attachment to the fitness report that this Headquarters (MMSB-32) attempted to obtain the petitioner's acknowledgment and rebuttal to the adverse nature of the fitness report. Based on the date of the Headquarters

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

correspondence (10 February 1994), that would have included offering the petitioner an opportunity to comment on the entire report (to include the Reviewing Officer's comments). Since there was ultimately nothing for a Third Sighting Officer to adjudicate/resolve, the report was correctly third-sighted at this Headquarters. That the petitioner disregarded official correspondence and chose not to respond was his decision, and one for which he must accept responsibility at this time (i.e., some six years after the fact).

b. Reference (b) is succinct that the results of a civil conviction (or court-martial) will be recorded in the reporting period in which the verdict is announced in court. Subparagraph 4006.7b applies. The incident was correctly documented in the challenged fitness report and constitutes neither an error nor an injustice. Only in the case of non judicial punishments does an appeal require a delay in reporting the event. Significant in this particular case is that the appeal was denied and the "guilty" finding/sentence remained in effect.

c. A relief from duties is the prerogative of the Commanding Officer and nothing furnished with reference (a) causes this Board to question that decision or the resulting fitness report. In essence, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

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