



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

SMC
Docket No: 02974-01
26 July 2001

SGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear 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 July 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 10 April 2001, 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 found the reporting senior's comments adequately supported the marks assigned in the contested fitness report. They did not find his comments to contradict themselves. They were unable to find that block 18 was incorrectly marked to show the report was based on "daily" observation, noting observation need not be direct. They noted that the platoon commander's counseling (enclosure (2) to your application) stated your noncommissioned officer skills were outstanding "except for your tact and judgment," adding "you need to work on when too [sic] voice your opinion." Finally, the supporting statements at enclosure (3) to your application did not persuade the Board that the contested fitness report was erroneous or unjust.

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

2974-01

IN REPLY REFER TO:

1610
MMER/PERB
10 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
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 22 Jan 01
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 4 April 2001 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 971107 to 980330 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is both inaccurate and unjust in its appraisal of his performance and potential. To support his appeal, the petitioner furnishes his own statement and copies of his rebuttals and counseling documents.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. In his statement appended to reference (a), the petitioner has done nothing more than provided another, yet albeit more detailed, statement detailing his disagreement with the report. The Reviewing Officer/Battalion Commander (Lieutenant Colonel [REDACTED]) affirmed that the petitioner's performance was as documented by the Reporting Senior and that his own familiarity with the circumstances concerning the counseling caused him to dismiss the petitioner's inference that it was related to or in retaliation for his request mast. In this regard, the Board discerns absolutely no error or injustice.

b. Even if a "personality conflict" did exist, it is not, in and of itself, grounds for relief. It is the duty and responsibility of the junior to accommodate the requirements of

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the senior unless and until the senior's actions exceed the bounds of professional conduct. There is no such showing in this particular case.

c. Although not an issue surfaced by the petitioner, the Board notes that the report has not been Third Sighted. Since the Reviewing Officer did not add any new or additional adverse material to which the petitioner needed to respond, the Board finds that conducting an administrative third sighting review will suffice. This action is being accomplished by the Personnel Management Support Branch (MMSB-30).

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED]'s official military record. The limited corrective action identified in subparagraph 3c is considered sufficient.

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