



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

SMC
Docket No: 03057-01
8 November 2001

SS [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. You requested removal of a fitness report for 27 February to 15 November 1996.

It is noted that the Commandant of the Marine Corps (CMC) has directed that the contested fitness report be amended by changing the beginning date from 27 February to 13 April 1996.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 November 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 16 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 warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

The Board found that the contested fitness report reflected no adverse marks. While the reporting senior did not intend for his comments to be taken as adverse, the Board found the contested report was properly treated as adverse in light of those comments. They found the reviewing officer had no duty to direct the reporting senior to revise or remove those of his comments which rendered the report adverse, but he correctly ensured that you were afforded your rights regarding adverse fitness reports. The Board was unable to find the reporting senior erred by marking block 18 to indicate the report at issue was based on

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"daily" observation, noting that observation need not be direct. While the Board did not condone the late submission of the contested report, the original of which was lost, they were unable to find this unduly prejudiced your ability to rebut the report. The Board found nothing objectionable in the reviewing officer's having asked several of your juniors, peers and senior Marines whether they would describe you as "simple." They found this was a proper step he took in meeting his responsibility to adjudicate differences between you and the reporting senior. The Board found it permissible for the reporting senior to reflect in your fitness report any dissatisfaction he might have had with your leadership style. Finally, the Board did not find that your more favorable fitness reports before and after the pertinent period invalidated the report in question.

In view of the above, your application for relief beyond that effected by CMC 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/BERB
16 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 STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt [REDACTED] D Form 149 of 12 Feb 01
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 11 April 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960227 to 961115 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is administratively and procedurally incorrect for multiple reasons. He cites an incorrect reporting period, points out that nonavailability in excess of 30 days must be recorded, challenges the Reporting Senior's basis of observation (Item 18), points out the late submission of the report, identifies what he believes to be inconsistencies between Sections B and C, and believes the Reviewing Officer abrogated his responsibility to ensure the report was completed per the guidance contained in reference (b). To support his appeal, the petitioner furnishes copies of the challenged fitness report and the report documenting his attendance at the Staff Noncommissioned Officers (SNCO) Academy.

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. When the petitioner signed Item 22 of the fitness report at issue, he certified the accuracy of the information contained in Section A. This includes, but is certainly not limited to, identifying the correct reporting period. Had there been any question as to the inclusive period, the petitioner should have surfaced his concerns at that time -- not almost five years after the fact. Nevertheless, the Board finds that since the

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ending date of his report from the SNCO Academy was "960412", the beginning date of the challenged report should have been "960413." This not viewed as a substantive error that would invalidate the entire report, and as such, the Board has directed the necessary corrective action. In this regard, the beginning date in Item 3b will be changed to "960413" and the number of months covered (Item 4b) will reflect "8."

b. Contrary to the petitioner's arguments and assertions, the Board discerns no blatant inconsistencies between any of the marks in Section B and the comments in Section C which would warrant invalidating the report. The Reviewing Officer clearly stated that the report is strictly interpreted and that the Reporting Senior did not pull any punches. The Adverse Sighting Officer further indicated that Captain [REDACTED] is a very hard grader and that the evaluation in the challenged report had definitely gotten the petitioner's attention on areas in which to improve.

c. The petitioner's disclaimer to counseling has not been corroborated. Although there may not have been an "official" counseling entry in the petitioner's Service Record Book, the Board is haste to point out that there are other forms of "counseling." Likewise, SRB counseling entries and performance counseling are separate and independent administrative actions. Additionally, the Reviewing Officer succinctly stated the petitioner had received counseling by his chain of command on his strengths and weaknesses and that he had been moved to another section for a different viewpoint.

d. To justify the deletion of a fitness report, evidence of probable error or injustice should be furnished. Such is simply not the situation in this case.

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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