



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

BJG
Docket No: 3984-01
21 June 2001

MA [REDACTED] USMC
[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 20 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 11 May 2001, a copy of which is attached. They also considered your rebuttal letter dated 24 May 2001 with enclosure.

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. Despite your assertion that the reviewing officer did not counsel you in 1989, they were unable to find that he erred in stating that he had discussed his opinions and the contested comments with you. In this regard, they noted that the reporting senior's letter of 23 May 2001 does not state that you were not permitted to discuss the reviewing officer's appraisal with him; it merely states that the reporting senior counseled you that such a discussion would be useless. 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
11 MAY 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 MAJOR
[REDACTED], [REDACTED] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 27 Feb 01
(b) MCO P1610.7C w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 9 May 2001 to consider Major [REDACTED] petition contained in reference (a). A change to the Reviewing Officer's Certification on his fitness report for the period 880611 to 890131 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner indicates that the Reviewing Officer's markings and comments were "substantively inaccurate and unjust" and that the Reviewing Officer's Certification should be changed to reflect a mark in block three vice block four. To support his appeal, the petitioner furnishes a letter from the Reviewing Officer of record [REDACTED] USMC(Ret).

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. The Board observes that when (then) Lieutenant Colonel [REDACTED] accomplished his review of the challenged fitness he did so in a conscious and knowing manner. His election of block four in the Reviewing Officer's Certification was not only a deliberate action, but also one that was succinctly justified by his own remarks. Further solidifying his opinion at the time was his testament that he had discussed this matter with the petitioner.

b. While the endorsements on the petitioner's Request for Augmentation are enthusiastic and supportive, they do not somehow question the validity of the challenged fitness report. Both the augmentation request and the fitness report are

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separate and unrelated administrative actions, generated for entirely different purposes. One is not dependent on the other.

c. In the situation at issue, the Reviewing Officer has indicated that "in retrospect and upon reconsideration..." he was wrong by disagreeing with the Item 15 distribution. Although previously held opinions may waver and change with time, judgmental reflections after the fact, or those motivated by a failure of selection, should not be used to change a report submitted in a timely manner. In this regard, the PERB finds no factual justification warranting the requested action; nor do they find that the Reviewing Officer's recollection some 12 years after the fact would be more vivid than as he recorded it at the time.

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

5. The case is forwarded for final action.

[REDACTED]

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