



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

BJG
Docket No: 4272-01
29 June 2001

CAPT ██████████ USMC
██████████
██████████
██████████

Dear Captain ██████████

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 27 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 23 May 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 report of the PERB.

Concerning the contested fitness report for 26 August to 18 December 1998, the Board found the supporting statement from the battalion landing team (BLT) executive officer (XO), at enclosure (4) to your application, did not refute the reporting senior's comment to the effect that you had to be "backstopped" by the battalion XO. They were unable to find that the reporting senior erred by stating you were counseled by himself, the XO and the S-3 officer, rather than the battalion S-3 officer alone. In this regard, they noted that the battalion S-1 officer who submitted the statement at enclosure (5) to your application would not necessarily have been aware of all the counseling you received. Further, counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, the Board found it unobjectionable that the reporting senior stated, as a reason for relieving you, his expectation that the BLT would suffer if you retained your duties; they likewise found it unobjectionable that he mentioned the new duties and the new reporting senior you would have for the following reporting period.

Regarding the contested reviewing officer comments on the fitness report for 18 December 1998 to 17 June 1999, the Board was unable to find these comments reflected bias against you formed during the previous period, nor could they find that the reviewing officer did not counsel you. To the extent these comments contrast with the reporting senior's comments or your other fitness reports, they found this does not establish that the reviewing officer comments at issue were invalid.

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

427201

IN REPLY REFER TO:
1610
MMER/PERB
23 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
CAPTAIN [REDACTED], USMC

Ref: (a) Captain [REDACTED]'s DD Form 149 of 16 Jan 01
(b) MCO P1610.7D w/Ch 1-5
(c) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 May 2001 to consider Captain [REDACTED]'s petition contained in reference (a). Action as indicated was requested on the following fitness reports:

a. Report A - 980826 to 981218 (CH) -- Removal in its entirety. Reference (b) applies.

b. Report B - 981218 to 990617 (CH) -- Removal of Reviewing Officer comments. Reference (c) applies.

2. The petitioner argues that Lieutenant Colonel [REDACTED] (Reporting Senior for Report A; Reviewing Officer for Report B) failed to incorporate many relevant accomplishments. Additionally, the petitioner believes that Lieutenant Colonel [REDACTED]'s evaluations contain "vague criticisms, erroneous facts, and irrelevancies." It is his position that he was never formally counseled prior to receiving the reports at issue. To support his appeal, the petitioner furnishes his own detailed statement and letters from six fellow officers.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the board emphasizes that when the petitioner acknowledged the adverse nature of Report A (evidence his signature in Item 24), he opted to omit a statement of rebuttal. In so doing, he passively concurred in the accuracy

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of the evaluation and indicated he had no extenuating or mitigating circumstances to present. The issues he now surfaces in reference (a) should have been raised at the time he received the report. To do so almost three years after the fact lacks not only timeliness, but a certain amount of credibility as well. Had those matters been addressed by the petitioner in the proper forum, the officers in the official reporting chain could have taken action to resolve any factual discrepancies. In this regard, the Board invites attention to paragraph 5007 of reference (b), the applicable portion of which is quoted verbatim: "The appeal process is not a substitution for an attempt at proper resolution of an adverse report at the time the report is prepared. . ."

b. Although the petitioner argues that the comments in Section C of Report A are inappropriate and vague, the Board finds that those comments outline the myriad of the petitioner's responsibilities and what he accomplished or did not accomplish to the Reporting Senior's satisfaction.

c. As much as [REDACTED]'s comments (enclosure (4) to reference (a)) seem to champion the petitioner's cause, they contain some revealing qualifications in the final paragraph that are not totally dissimilar to Lieutenant Colonel [REDACTED] negative assessments. Comments such as: "could delegate better", "been more demanding", and "with some glitches." Notwithstanding, [REDACTED] was not the Reporting Senior, and as such, his perspective is simply not binding.

d. If the Board was to accept [REDACTED]'s comments as being authentic, then we can also discount the advocacy comments at enclosures (1) and (3) by the 31st MEU S-4 and S-4A, respectively. Although they portray their efforts as accomplished, and in support of similar accomplishments of the petitioner [REDACTED] describes their support and influence, for all intents and purposes, as useless. This certainly taints their credibility.

e. The advocacy statements from [REDACTED] and Captain [REDACTED] (enclosures (2) and (5), respectively) are supportive. Their observations, however, were from their limited responsibilities and perspective versus those of the Battalion Commander. Simply stated, they did not have Lieutenant Colonel

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
CAPTAIN [REDACTED] USMC

Hand's overall responsibilities to evaluate and officially document the petitioner's performance.

f. Lieutenant Colonel [REDACTED]'s statement at enclosure (6) to reference (a) documents his professional association with the petitioner subsequent to the periods covered by Reports A and B. As such, he has no relevancy to the issues under consideration.

g. Contrary to the petitioner's arguments and assertions, there is absolutely nothing inconsistent or adverse relative to the Reviewing Officer's comments/actions on Report B. Since Lieutenant Colonel [REDACTED] is the Reporting Senior for Report A, he had ample observation and sufficient knowledge of the petitioner's professional capabilities and potential to render an observed assessment.

4. The Board's opinion, based on deliberation and secret ballot vote, is that Report A and the Reviewing Officer's comments included with Report B 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