



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

BJG
Docket No: 4368-01
2 August 2001

CV [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. It is noted that the Commandant of the Marine Corps (CMC) has directed the requested correction of your fitness report record, specifically, removal of your original report for 15 October 1999 to 30 April 2000, and insertion in its place of your revised report for the same period.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 August 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 (HQMC) Performance Evaluation Review Board, dated 29 May 2001 with enclosure, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMAA-4), dated 22 May 2001, copies of which are attached. They also considered your rebuttal letter dated 26 July 2001.

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. Notwithstanding your letter of 26 July 2001, the Board substantially concurred with the comments contained in the advisory opinion from MMAA-4 in finding that your selection by the Fiscal Year 2001 Chief Warrant Officer-3 Selection Board would have been definitely unlikely, even if your fitness report record had been corrected. Accordingly, 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

21369 01

IN REPLY REFER TO:

1610
MMER
29 May 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CWO2 [REDACTED] DENIAL
[REDACTED] USMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 21 May 01
(2) CMC Advisory Opinion 1610 MMOA-4 of 22 May 01
(3) Copy of CMC ltr 1610 MMER/PERB of 29 May 01

1. As evidenced by enclosure (1), PERB removed from [REDACTED] official military record, the fitness report for the period 991015 to 000430 (AN).
2. We defer to BCNR on the issue of [REDACTED] request for the removal of her failure of selection to the grade of CWO3. Enclosure (2) is furnished to assist in resolving that matter.
3. By enclosure (3), this Headquarters provided [REDACTED] with a copy of the Advisory Opinion contained at enclosure (2).

[REDACTED]
Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

21368-01

IN REPLY REFER TO:
1610
MMER/PERB
21 MAY 2001

From: Commandant of the Marine Corps
To: [REDACTED] USMC

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
3 May 00	[REDACTED]	991015 to 000430 (AN)

2. There will be inserted in your Naval record in place of the removed report, the revised version included with your Application for Correction to Military Record (DD Form 149) of 1 March 2001.

3. The Commandant of the Marine Corps is not empowered to grant or deny the removal of failure(s) of selection from a Naval record. Accordingly, your case will be forwarded to the Board for Correction of Naval Records (BCNR) for consideration of that issue.

[REDACTED]

By direction



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

436861

IN REPLY REFER TO:

1600
MMAA-4
22 May 01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CHIEF WARRANT OFFICER [REDACTED]
3 [REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
CWO-2 [REDACTED] 213 78 3508 USMC
of 21 May 01.

1. Recommend disapproval of [REDACTED] request for removal of her failure of selection.

2. Per the reference, we reviewed [REDACTED] record and petition. [REDACTED] failed selection on the FY01 USMC CWO-3 Selection Board. She successfully petitioned the Performance Evaluation Review Board (PERB) to remove the Annual Fitness Report for the period 991015 to 000430. [REDACTED] requests removal of her failure of selection.

3. In our opinion, the favorable PERB action marginally enhances the competitiveness of the record, but not enough to warrant removal of the failure of selection. Moreover, CWO-2 [REDACTED] record contains others areas of competitive concern that, more than likely, led to her failure of selection.

a. **Section B Marks.** [REDACTED] record contains a Section B trend of Excellent marks in Handling Enlisted on three consecutive fitness reports. She is also marked Excellent in Personal Appearance and Military Presence as a CWO-2.

b. **Section C Comments.** C [REDACTED] record contains consistent growing comments. As a new Warrant Officer, she received the following growing comments, "somewhat tentative in seizing control of her platoon," and "Seeks guidance and advise from seniors and peers to better her technical and leadership skills." Section C comments as a [REDACTED] similarly unenthusiastic: "strives for self-improvement in all she does," and "well qualified for assuming duties as a staff officer." These comments are not consistent with those of her peers.

Subj: BCNR PETITION FOR CHIEF WARRANT OFFICER [REDACTED]
[REDACTED] USMC

c. Value and Distribution. [REDACTED] rankings are three above and zero below as a Warrant Officer. Her rankings are two above and zero below as a CWO-2. Her total value and distribution is five above and zero below. This distribution is not competitive for promotion.

4. In summary, the favorable PERB action marginally enhances the competitiveness of [REDACTED] record but not enough to warrant removal of the failure of selection. Moreover, the record contains other areas of competitive concern that, more than likely, led to her failure of selection. Therefore, we recommend disapproval of [REDACTED] request for removal of her failure of selection.

5. POC [REDACTED]

[REDACTED]

Major, U. S. Marine Corps
Head, Officer Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

5120-01
IN REPLY REFER TO:
1610
MMER/PERB
25 JUN 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] USMC

Ref: (a) Major [REDACTED] DD Form 149 of 16 Apr 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 20 June 2001 to consider Major [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990801 to 000531 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends it was the intent of the Reporting Senior to write an adverse fitness report upon the occasion of his transfer from Okinawa. However, since there was insufficient substantiation to render an adverse report, the petitioner believes the Reporting Senior deliberately wrote the report in such a manner as to preclude his opportunity to append a statement of rebuttal. The petitioner further attributes the Reporting Senior's failure to write an adverse fitness report to the possibility of that officer's own conduct to come into question. Finally, the petitioner states that a certain item of commendatory material was omitted from the report. To support his appeal, the petitioner furnishes copies of e-mail transmissions, his own statement, other third party statements, a copy of an award recommendation, a copy of a Letter of Appreciation (LOA) from the Government of Japan, the challenged fitness report, and the report immediately preceding.

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. Notwithstanding the volume of documentation furnished with reference (a), there is nothing substantive to show the report at issue is anything other than a fair and objective evaluation of the petitioner's demonstrated performance during

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

the stated period. Likewise, there is nothing to show the Reporting Senior intended to make the report adverse. That the petitioner and others believe his performance evaluation should have been graded higher is viewed as a product of differing opinions as to the level of success achieved. What is paramount is that the report reflects the judgmental opinions/evaluations of the Reporting Senior and Reviewing Officer (those officially charged with the responsibility to evaluate and document performance). The Board believes that if the petitioner were being dealt an injustice [REDACTED] would come to his defense since he was an addressee on enclosure (1) to reference (a). We find no such documentation.

b. The Board observes that the recommendation for the Meritorious Service Medal was prepared almost three months prior to completion of the challenged fitness report. What may appear as a contradiction seems to be fully answered in the Reporting Senior's e-mail at enclosure (1) to reference (a). Regarding that e-mail, the Board does not accept the petitioner's argument that his wife was mentioned in "official correspondence." Enclosure (1) is best categorized as a personal communication between the petitioner, the Reporting Senior, and the Reviewing Officer. Simply stated, it has no "official" standing. We also point out that this is correspondence the petitioner apparently sought out, but now obviously disagrees with its content.

c. Since each report is for a finite period, fluctuations in grades are presumed to be nothing more than a measure of degree in what areas the intensity and application of effort were required. A Reporting Senior is under no obligation to grade a subsequent report in the same manner as the previous one was graded. There is no stated presumption of consistency. Only the individual, by his or her steadfast performance, can guarantee that consistency.

d. The Board agrees with the petitioner that the Letter of Appreciation from the Government of Japan should have been mentioned in the report. They do not, however, find this oversight to invalidate the report. Instead, they have directed modification of the final sentence in Section I to read as follows: "SNO additionally awarded Certificate of Appreciation from the American Red Cross and a Letter of Appreciation from the Government of Japan."

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] 23, USMC

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

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