



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

BJG
Docket No: 4575-01
18 October 2001

SSG [REDACTED] USMC
[REDACTED]
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 October 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 (PERB) in your case, dated 4 June 2001 with enclosure, and the advisory opinion from the HQMC Military Law Branch, Judge Advocate Division (JAM8), dated 27 August 2001, copies of which are 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 and the advisory opinion from JAM8. Accordingly, 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

Enclosures



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

457501

IN REPLY REFER TO:
1610
MMER/PERB
4 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 STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt [REDACTED] DD Form 149 of 8 Mar 01
(b) MCO P1610.7E w/Ch 1

Encl: (1) MCTFS Excerpt (Legal Action 119 Remarks)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 31 May 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 991030 to 991117 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner states that the command that adjudicated the Article 15 and submitted the challenged fitness report failed to complete all administrative matters per the JAG Manual and the Manual for Courts-Martial. This, he believes, warrants removal of the report. To support his appeal, the petitioner furnishes copies of the challenged report, Pages 11 and 12 from his Service Record Book (SRB), excerpts from the IRAM and an e-mail between First Sergeant [REDACTED] and Sergeant Major [REDACTED].

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. Simply stated, the petitioner is wrong. Not only does the petitioner acknowledge receiving "Battalion NJP" in his official rebuttal to the report, the imposition of those proceedings is documented in the Marine Corps Total Force System (MCTFS). See enclosure (1).

b. The mere fact that the petitioner cannot remember certain events does not somehow remove the requirement to report the NJP per subparagraph 3004.2c of reference (b). His belief that the absence of certain paperwork should invalidate the

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

fitness report is totally without merit. These are separate administrative actions where one is not necessarily dependent on the other. Finally, we note that in enclosure (4) to reference (a), the former Battalion Commander and also Third Sighting Officer, Lieutenant Colonel [REDACTED] vividly recalls the events of that day.

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



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

457501

IN REPLY REFER TO:
1070
JAM8
27 AUG 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] USMC

1. We are asked to provide an opinion on Petitioner's request for the removal from his service record book (SRB) and official military personnel file (OMPF) of all entries related to the nonjudicial punishment (NJP) he received on 16 November 1999. Petitioner also requests removal of the adverse fitness report for the period 30 October 1999 through 17 November 1999.

2. We recommend that the requested relief be denied. Our analysis follows.

3. Background

a. On 16 November 1999, Petitioner received NJP for violation of a lawful general order in violation of Article 92 of the Uniform Code of Military Justice (UCMJ).

b. On 30 November 1999, Petitioner signed an adverse fitness report and submitted an addendum page (a rebuttal), in which he acknowledges the NJP.

c. In response to Petitioner's application, the Performance Evaluation Review Board (PERB) opined that the contested fitness report covering the period of 30 October 1999 through 17 November 1999 should remain a part of Petitioner's official military record.

4. Analysis. Existing records of the Petitioner's NJP should not be removed from his OMPF and his SRB. Petitioner requests that all references to his NJP be removed from his record because there is no "p.12" (NAVMC 118) recording his NJP and because there is no "Booker Rights" counseling record in his service record book (SRB). Both arguments are without merit.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] USMC

a. The missing p.12. Petitioner claims that because his SRB does not contain a p.12 entry regarding his NJP, all record of his NJP should be expunged from his service records. There is no basis in law or Service practice for his request. While prompt and accurate record keeping is highly desirable, it is not required. In fact, paragraph 5000.8 of the Marine Corps Individual Records Administration Manual (IRAM) specifically authorizes late entries in a Marine's SRB. Thus, the failure to maintain, or even to create, a p.12 entry regarding an NJP does not invalidate or otherwise negate the existence of the NJP. Other administrative actions of a documentary nature, such as unit diary and fitness report entries, may also serve to document the existence of an NJP. This is true in Petitioner's case. The existence of Petitioner's NJP is recorded in the Marine Corps Total Force System unit diary retrieval system¹ and in his fitness reports. Further, in this case, not only does the Petitioner admit receiving NJP, but other command officials remember the NJP as well. As such, the poor record keeping in this case amounts to nothing more than harmless error.²

b. The missing "Booker" counseling record. Petitioner also claims that he does not remember receiving counseling in accordance with *United States v. [REDACTED]*. This is irrelevant. Failure to properly document a [REDACTED] counseling opportunity merely prevents the record of NJP from being later admitted into evidence during the sentencing portion of a court-martial. It has nothing do with the propriety or validity of the NJP itself.

¹ Per paragraph 10300.9 of the Marine Corps Total Force System Personnel Reported Instructions Manual (MCTFSPRIM) diary retrieval system (DRS) transactions will appear on the DRS for approximately only 90 to 180 days, therefore the specifics of the NJP entry ran on unit diary can not be determined. However, per paragraph 70503 of the MCTFSPRIM the history of Petitioner's NJP has been retained permanently in MCTFS (Remark 119).

² It should also be noted that it is common Marine Corps practice to have Marines hand-carry SRB's from duty station to duty station when they are transferred. Additionally, SRB are constantly accessed by numerous and ever-changing administrative clerks. This is not to suggest that SNM removed the p.12 (NAVMC 118) from his service record, rather, it is to suggest that SRB are well-traveled and heavily-accessed documents, and as such, the absence of documentation from a particular SRB recording an event, such as an NJP, does not necessarily mean that the event did not occur. This is, of course, particularly so where a service member admits that the event in question actually occurred.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] SMC

5. Conclusion. We recommend that Petitioner's request for relief be denied.

[REDACTED]

Head, Military Law Branch -
Judge Advocate Division