



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

SMC
Docket No: 04615-01
1 November 2001

SSGT [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 the fitness report for 1 April to 8 June 1999.

It is noted that the Commandant of the Marine Corps (CMC) has directed that the contested fitness report be modified by removing, from the reviewing officer's comments and your statement of 30 June 1999, references to the CRC (Case Review Committee).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 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 5 June 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 corrective action. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board was unable to find you were not counseled about perceived deficiencies. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. 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

46-15-01

IN REPLY REFER TO:
1610
MMER/PERB
5 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 9 Mar 01
(b) MCO P1610.7E

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 990401 to 990608 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is unjust and unsubstantiated. To this end, he contends he was never counseled during the reporting period on any "negative aspects" of his performance, judgment, or handling enlisted Marines. Likewise, he states that at no time did he disregard orders; nor did his unit fail to accomplish its assigned mission. Finally, the petitioner believes it is unfair to mention the CRC since a final determination had not been made by the end of the reporting period. To support his appeal, the petitioner furnishes his own statement and copies of the two fitness reports immediately preceding the one at issue.

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. Succinctly stated, the issues which the petitioner surfaces in reference (a) are the same as those raised in his official rebuttal. The Board observes that Lieutenant Colonel [REDACTED] (the Reviewing Officer) provided a thorough and detailed adjudication and resolved all factual differences. For the petitioner to argue that counseling could not have occurred on a specific date appears to be a "smoke screen." Regardless of whether counseling occurred on "990424" or some other date, the

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fact remains that Lieutenant Colonel [REDACTED] specifically identified the numerous counseling sessions.

b. The Board agrees with the petitioner that mention of the CRC may be premature or prejudicial. They do not, however, find that removal of the report is either necessary or warranted. Instead, the Board has directed elimination of the comments identified below:

(1) From Lieutenant Colonel [REDACTED] Addendum Page of 30 June 1999. The sentence: "At the time of this report's end date, CRC had not made final determination."

(2) From Page 2 of the petitioner's Addendum Page. The following comments: "and as far as the domestic disturbances as of this report the CRC has not made a determination."

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 Staff Sergeant [REDACTED] official military record. The limited corrective actions identified in subparagraphs 3b(1) and 3b(2) are considered sufficient.

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