



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

sm

BJG
Docket No: 5812-01
23 August 2001

SSGT [REDACTED] MC
[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 22 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 Performance Evaluation Review Board (PERB), dated 20 July 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 comments contained in the report of the PERB. 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

Enclosure



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

IN REPLY REFER TO:
1610
MMER/PERB
20 JUL 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 7 Feb 01
(b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 July 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 000101 to 000330 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the command failed to follow proper procedures in investigating allegations; that he was basically found guilty before any investigative action was concluded. Finally, the petitioner denies that Major [REDACTED] was his correct Reporting Senior. To support his appeal, the petitioner furnishes copies of the following documents: page 11 from his Service Record Book (SRB), orders, fitness report, suspect's rights acknowledgement statement, Letter of Appointment, Investigation Officer's report, and first endorsement of preliminary investigation.

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 nature of the adversity in the challenged fitness report lies in referencing the petitioner's receipt of a page 11 entry. Such action was taken based on the petitioner's use of discriminatory and harassing language/comments and fostering an improper relationship with a subordinate female Marine. The petitioner was correctly afforded an opportunity to submit a statement of rebuttal, which he did. While the Reviewing Officer could have expanded his commentary, he nevertheless succinctly stated the petitioner's behavior was inappropriate.

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b. Notwithstanding the documentation supplied with reference (a), the Board finds nothing to refute the inferences of poor judgment and setting the example. In fact, the documents submitted as evidence are replete with incidents regarding questionable conduct and poor decisions and leadership ability.

c. There is no apparent injustice in the late submission of the report to this Headquarters. It is the responsibility of the Reviewing Officer to ensure accuracy and correctness prior to submission to this Headquarters. If this entails a delay, then this Headquarters would rather receive the report late and correct than on time and wrong.

d. The petitioner cites paragraph 7004 of reference (b) in attempting to establish a baseline argument. That section deals with combat fitness reports and unique operational deployment situations, not pending investigations. The page 11 entry and the fitness report at issue are about poor judgment and leadership. The investigation subsequent to the end of the reporting period was to determine if there were violations under the Uniform Code of Military Justice. This was a separate process not in conflict with the validity of the fitness report.

e. Other than the petitioner's own statement, there is nothing to corroborate his claim that Major [REDACTED] was not the correct Reporting Senior of record. The Board notes the period 990805 to 991231 is missing a fitness report. While only speculation, a change of reporting senior could have coincided with the annual fitness report that was due 31 December 1999.

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.

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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