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

BJG
Docket No: 6047-01
8 November 2001

CAPT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Captain [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 7 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 31 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.

The Board was unable to find that the reporting senior lacked sufficient basis to render an observed report, noting that observation need not be direct. They were likewise unable to find you did not have a valid transfer on 6 October 1999, so they could not find the occasion of the contested fitness report, "TR" (transfer), was incorrect. Although they found the relief of your reporting senior would have required a separate "CH" (change of reporting senior) report if it occurred on a date before the date of your transfer, they were unable to find when this relief occurred. If it occurred on the same date as your transfer, marking the occasion of your report either "TR" or "CH" would be permissible. They noted you did have an opportunity to comment on your transfer. While your relief for cause was a separate action from your fitness report which mentioned it, they found it was procedurally sufficient for you to have been afforded a chance to rebut the relief in your rebuttal to the fitness report. They found the reporting senior's comments adequately supported the adverse marks;

and they did not find the comments to have been placed in the wrong blocks. Finally, they did not find your prior fitness reports or the Marine Corps colonel's letter of 29 August 2000 at enclosure (5) to your application, recommending you for the Congressional Fellowship Program, invalidated the report at issue.

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

6647-01

IN REPLY REFER TO:
1610
MMER/PERB
31 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
CAPTAIN [REDACTED] USMC

Ref: (a) Captain [REDACTED] DD Form 149 of 27 Mar 99
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 July 2001 to consider Captain [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990801 to 991006 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the report is based solely upon a complaint by a female officer (Staff Platoon Commander) against her Company Commander. As a result of the ensuing investigation, the petitioner observes the complaint and investigation were broadened to cover all staff platoon commanders in Company D. It is his position that said complaint and investigation were the only reasons for submission of the fitness report. In support of his appeal, the petitioner furnishes his own detailed statement, a copy of Request Mast proceedings, a copy of a student letter of 2 November 1999, Colonel [REDACTED] letter to the PERB, a copy of his (the petitioner's) current fitness report, and a copy of the command investigation. The following observations are offered as relevant:

a. The report is adverse because the petitioner was a willing participant and contributor to a negative and unprofessional command environment as a staff member at Company D (BOC 4-98), The Basic School, Quantico, Virginia. Colonel [REDACTED] Commanding Officer of The Basic School, assumed Reporting Senior authority of the challenged fitness report because the Commander for Company D (i.e., the petitioner's regular Reporting Senior) had been relieved for cause.

b. The fitness report at issue was properly referred to the petitioner for acknowledgement and the opportunity to submit a

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statement in his own behalf. The petitioner availed himself of that opportunity and the rebuttal was properly adjudicated by the President, Marine Corps University (Brigadier General [REDACTED]).

c. The petitioner's contention that his past conduct (which he does not deny) is now somehow excusable since he was never prosecuted under the Uniform Code of Military Justice (UCMJ) for sexual harassment is considered without merit. It appears this argument is based on his belief that the adverse nature of the report was unwarranted since none of his peers were offended by the so-called friendly sexual bantering and joking, and because Captain [REDACTED], in part, an apparent willing participant and enjoined in the bantering.

d. The environment, command climate, and circumstances surrounding the atmosphere were thoroughly investigated. It is most unfortunate and disconcerting that several intermediate level commanders did not correct the situation. It is also unfortunate that Captain [REDACTED] did not show the moral courage and fortitude to avoid becoming a passive object of much of the sexually oriented and inappropriate language and conduct. Regardless, the crass conduct of the petitioner's peers (Captain [REDACTED] included) was not a license or an excuse for the petitioner to act in a similar manner. The petitioner was part of the actions summarized on page four (paragraph three) of Lieutenant Colonel [REDACTED] investigation of 13 October 1999; described as extremely vulgar, void of respect, little consideration of good manners, total disregard for others, and lacking "the moral fiber that binds us together as Marines." In other words -- **conduct unbecoming an officer!**

e. Brigadier General [REDACTED] comments in Section K4 of the report, quoted verbatim, place the entire situation in its proper perspective. "The actions of the female captain notwithstanding, Captain [REDACTED] had a duty as an officer and a gentleman, and as a Staff Platoon Commander at The Basic School, to conduct himself in a manner consistent with the high, uncompromising, moral standards of the Marine Corps. He failed in this duty. . ."

f. The petitioner's contention in paragraph two of his letter furnished with reference (a), indicating that both

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Commanding Generals [REDACTED] and [REDACTED] advocated that he file this petition is unfounded. Brigadier General [REDACTED] review is self-evident and Lieutenant General [REDACTED] summary of the petitioner's Request Mast (enclosure (3) to reference (a)) suggests no such thing.

g. In Colonel [REDACTED] advocacy statement of November 14, 2000 (enclosure (5) to reference (a)), he clearly stated: ". . .I am not taking exception with either the investigation or evaluation awarded to Captain [REDACTED]. Yet in the next sentence he indicates he finds it difficult to believe the petitioner knowingly discredited himself, family, and Corps. This is not an issue of abolishing the "zero defect mentality." Rather, it's an issue of accurately recording negative conduct and questionable actions via the performance evaluation system.

h. Whatever long-term consequences the challenged fitness report may have on the petitioner's career is not germane in adjudicating fairness or accuracy. Notwithstanding the volume of documentation furnished with reference (a), the Board finds nothing to show the report is not a fair or accurate portrayal of the petitioner's performance and conduct during the stated period.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Captain [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