



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

SMC
Docket No: 06220-01
29 November 2001

SS [REDACTED] SMC
[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 29 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 3 August 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. Concerning the contested fitness report for 10 January to 7 August 1996, the Board was unable to find you were not guilty of the offense for which you received the nonjudicial punishment (NJP) reflected in that report. In this regard, they noted that the reviewing officer stated you made a plea of guilty, and they observed that you did not appeal the NJP. 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

IN REPLY REFER TO:
1610
MMER/PERB
3 AUG 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 5 Apr 01
(b) MCO P1610.7C w/Ch 1-6
(c) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 1 August 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 920718 to 921102 (TR) - Reference (b) applies
- b. Report B - 960110 to 960807 (TD) - Reference (c) applies

2. The petitioner contends the evaluation contained in Report A was based solely on the last four months vice the full 12 months. Concerning Report B, the petitioner states he did not attempt to defraud the government and infers the nonjudicial punishment (NJP) was unfair. To support his appeal, the petitioner furnishes his own statement, several items of documentary evidence, and third party statements.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The Board is not sure to what the petitioner is referring when he indicates Report A only reflects the last four months of the reporting period as opposed ^{to} the entire 12 months. Report A documents the petitioner's performance for slightly less than the final four months of his tour with the Inspector-Instructor Staff, Augusta, Georgia. That is precisely what the report should have reflected -- nothing more or less. That the petitioner believes he rated more than what has been recorded has not been borne out by the documents included with reference (a).

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

b. Report B correctly records the imposition of NJP, and in this regard, constitutes neither an error nor an injustice. Whatever impact the continuing presence of Report B may have on the petitioner's career progression is not germane in determining if it should remain within his official record. In this regard, the Board emphasizes that it cannot and does not operate under the premise that administratively correct and factually accurate fitness reports should be removed simply to enhance promotional competitiveness.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports 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