



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

SMC
Docket No: 06847-01
4 October 2001

SSGT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Staff S [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 4 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 Performance Evaluation Review Board (PERB), dated 24 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. The Board was unable to find the reporting senior engaged in the same practices for which you received nonjudicial punishment (NJP). In this regard, they noted that you have not provided a statement to this effect from any other person. Further, they were unable to find you were told you had to accept NJP, or you would not be extended on active duty. Finally, as stated by the PERB, the contested fitness report and your extension on active duty were separate administrative actions; and while the reporting senior did recommend approval of your extension, he did so without making any further comment.

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

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

6847-01

IN REPLY REFER TO:
1610
MMER/PERB
24 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) SSg [REDACTED] DD Form 149 of 29 May 01
(b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 22 August 2001 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 990927 to 000124 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the infraction that resulted in the nonjudicial punishment (NJP) recorded in the report was an act he had witnessed being conducted by the same officer who imposed the NJP. Such an action, he believes, was acceptable. The petitioner also points out the Reviewing Officer's comment relative to a non-recommendation for promotion or continued service contradicts that officer's earlier recommendation for a 24-month extension on extended active duty. To support his appeal, the petitioner furnishes his own statement, a copy of the challenged fitness report, and a copy of his Request for Extension on Extended Active Duty Reserve Program.

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. At the outset, the Board emphasizes that when the petitioner acknowledged the adverse nature of the fitness report more than a year ago, it was then that he should have surfaced the issues and disagreements he now presents in reference (a). At that time, all parties involved in the performance evaluation cycle could have resolved any differences. We also point out that reference (b) is specific in stating that the appeal system is not a substitute for adjudication of an adverse fitness report at the time it is prepared.

(3) PERB

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b. Regardless of what the officer imposing NJP may or may not have done, the petitioner violated the Uniform Code of Military Justice. For that, he was correctly held accountable and the NJP was properly recorded via the performance evaluation system. In this regard, we discern absolutely no error or injustice.

c. The petitioner is incorrect that Colonel [REDACTED] (the Reviewing Officer) previously recommended him for continued extended active duty. That document was signed by a "D. A. Dean" (by direction) and was possibly never seen nor known by Colonel [REDACTED]. Nevertheless, each is a separate administrative action where one is not dependent on the other.

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