



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

SMC  
Docket No: 07010-01  
25 October 2001

MSGT [REDACTED] SMC  
[REDACTED]  
[REDACTED]

Dear Master 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 25 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 5 September 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 noted that the contested "CD" (change of duty) fitness report does not indicate you were relieved for cause. Further, they found that the only adverse aspect of the report was the portion of the narrative which served to explain the reason for your change of duty. They did not find that this report stigmatized you, noting that the marks were not adverse. Concerning counseling, they agreed with the PERB; and in any event, they generally do not grant relief on the basis of an alleged absence of counseling, as counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, as indicated above, they found the comments do serve the constructive purpose of explaining why you had a change of duty. They noted that the paragraph you cited in this regard, paragraph "5001[.2.]f (1)," came from Marine Corps Order (MCO) P1610.7D dated 3 March 1995, not MCO P1610.7E, as stated by the PERB; however, they found that the applicable order, MCO P1610.7B, contained no such language.

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

7011-61

IN REPLY REFER TO:  
1610  
MMER/PERB  
5 SEP 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  
MASTER SERGEANT J [REDACTED] USMC

Ref: (a) MSgt. [REDACTED] DD Form 149 of 20 Jun 01  
(b) MCO P1610.7B w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 August 2001 to consider Master Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 840126 to 840405 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that since he requested to be removed from Drill Instructor duty because of family medical problems he should have been relieved for the "good of the service" and not for "cause." He also denies any type of counseling and believes some of the Reporting Senior's comments serve no constructive purpose. Finally, he believes that a third officer should have sighted the report.

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 first acknowledged the adverse nature of the challenged fitness report, he not only acknowledged his emotional instability, but also agreed that he was not suited for Drill Instructor duty and requested avoidance of his 8511 MOS. Whatever concerns and issues the petitioner now surfaces in reference (a) should have been raised at the time of his rebuttal. To do so more than 17 years after the fact lacks timeliness and credibility as well.

b. With all due respect to Lieutenant Colonel [REDACTED] his statement that the fitness report at issue ". . . was the result of the political climate at the time" is simply not borne out by documentary evidence. It appears as though several

(3) PERB

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factors adversely affected the petitioner's performance and all were appropriately documented via the performance evaluation system. In this regard, we discern absolutely no error or injustice.

c. There is no documentation or evidentiary material to indicate the petitioner was not counseled or provided some type of performance feedback during the reporting period. Given the gravity of being relieved of his duties, the petitioner certainly would have been afforded the benefit of counseling.

d. The petitioner is incorrect that a third officer should have sighted the report. That requirement did not become effective until the publication of Marine Corps Order P1610.7C on 16 December 1985. Additionally, we note the referenced paragraphs cited by the petitioner simply have no relevance at all since they are contained in the current performance evaluation system directive (MCO P1610.7E), which became effective on 1 January 1999.

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