



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

BJG
Docket No: 7121-01
18 October 2001

CAR [REDACTED] MCR
[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 17 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 reporting senior's observation need not have been direct to support the item 18 mark reflecting the contested fitness report was based on "daily" observation. They were unable to find you were not counseled on your performance, noting that both the reporting senior and reviewing officer attest you were counseled. They were likewise unable to find you were commended for your performance during the exercise. Finally, they noted that the reporting senior did mention your additional duties, stating that you "performed the additional duties as the HQ [Headquarters] Cmdt [Commandant] for the exercise." Per Marine Corps Order P1610.7D, paragraph 4004.2, the reporting senior's comments need identify only those additional duties which "required the Marine to devote prolonged periods of time." They were unable to find those of your additional duties which were not expressly mentioned required you to devote prolonged periods of time.

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
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
CAPTAIN [REDACTED] USMCR

Ref: (a) Capt. [REDACTED] Form 149 of 27 Jun 01
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 29 August 2001 to consider Captain [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980701 to 981008 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the Reporting Senior's mark of "daily" in Item 18 is inaccurate; that given the limited amount of actual observation, both physical and otherwise, a mark of "infrequent" would have been more appropriate. This, she states was surfaced in her rebuttal; however, the Reporting Senior refused to make a change. The petitioner also believes the Reviewing Officer added new/additional adverse material that should have been referred for acknowledgement and further rebuttal. In addition to the noted administrative errors, the petitioner states there is a substantial amount of unjust material. To support her appeal, the petitioner furnishes her own statement and a copy of the challenged fitness 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. In her statement appended to reference (a), the petitioner has merely furnished a second rebuttal to this already properly and completely adjudicated evaluation. While she may continue to disagree with the contents of the fitness report, she has not provided any documentation to cause the Board to question either its accuracy or fairness. In this regard, the Board emphasizes that to justify the deletion of a fitness report, evidence of probable error or injustice should be presented. Such is simply not the situation in this case.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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b. In his Section C comments, the Reporting Senior qualified his statements regarding the petitioner's performance during the UFL '98 exercise and stated her immediate senior provided information. We note the Reviewing Officer further addressed that issue. We conclude there was no violation of reference (b) in the Reporting Senior's marking of "daily" in Item 18.

c. Contrary to the petitioner's argument, the Board concludes the Reviewing Officer did not add additional or new adverse material. Instead, Lieutenant Colonel [REDACTED] comments are viewed as adjudicating and resolving factual disagreements, albeit in favor of the Reporting Senior. As a result, the petitioner was correctly not provided an opportunity to acknowledge and respond.

d. The only issue raised in reference (a) that was not surfaced in the petitioner's rebuttal to the fitness report concerns her uniform appearance. It is her position that her appearance could not have been substandard since she purchased all new maternity uniforms. The petitioner never made such a claim in her official rebuttal and nothing substantiates that was a fact during the reporting 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