



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

BJG
Docket No: 5473-00
30 March 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: SSGT [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 20 Jul 00 w/attachments
(2) DD Form 149 dtd 24 Feb 00 w/attachments
(3) DD Form 149 dtd 6 Oct 00 w/attachments
(4) HQMC MMER/PERB ltr dtd 20 Dec 00
(5) HQMC MI memo dtd 5 Oct 00
(6) MCRC memo dtd 24 Oct 00
(7) HQMC MMEA memo dtd 27 Oct 00
(8) Subject's ltr dtd 28 Nov 00 less encl
(9) BCNR file, doc no: 8465-00
(10) Memo for record dtd 8 Mar 01
(11) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing his page 11 ("Administrative Remarks (1070)") entry dated 11 January 1999 (Tab A to enclosure (1)) and the request dated 26 July 1999 for his relief for cause (RFC) with related documentation (Tab B to enclosure (3)). He also requested reinstatement of his recruiter military occupational specialty (MOS) 8411 and recoupment of his Special Duty Assignment (SDA) pay.

2. The Board, consisting of Messrs. Beckett, Geisler, and Mackey, reviewed Petitioner's allegations of error and injustice on 13 March 2001, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner was relieved for cause from duty as a recruiter at Recruiting Station (RS), Nashville, Tennessee. The letter requesting his RFC stated that the request was based on Petitioner's "lack of effort." It stated that his monthly recruiting contract production rate was only .38 for the period 1 October 1998 to 31 May 1999, while the recruiting station's mandatory minimum was 1.80. It further stated that Petitioner had told his commanding officer (CO) that he "quit because he could not recruit for the Marine Corps in good conscience."

c. The contested page 11 entry stated Petitioner had been counseled "concerning deficiencies in [his] conduct and performance as a Marine SNCO [staff noncommissioned officer]."

d. Concerning the RFC, Petitioner contended that his overall production rate of 2.13 for 23 months at RS Nashville exceeded his recruiting station's mandatory minimum of 1.80. He noted that the letter requesting his RFC did not allege that he had committed any misconduct. He alleged that the findings of the preliminary inquiry concerning his case possibly had been misrepresented, as an earlier version of the request for his RFC, dated 28 June 1999, had included allegations of misconduct. He noted that the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) had directed removal of his adverse change of duty ("CD") fitness report for 1 October 1998 to 28 May 1999, which covered the period addressed by the request for his RFC. Finally, he further noted that the CO, RS Nashville memorandum to all recruiters at enclosure (4) to his application did not mention RFC as a response to recruiting shortfalls.

e. Regarding the page 11 entry, Petitioner objected that it did not specifically identify deficiencies or suggest corrective actions; that the CO, RS Nashville never intended for it to be filed in his record; that it has an incorrect CO signature date of 11 January 1998, rather than 11 January 1999; and that it lacks an entry noting Petitioner's refusal to sign.

f. Enclosure (2) is Petitioner's application for removal of his fitness reports for 1 October 1998 to 28 May 1999 and 29 May to 9 November 1999. Enclosure (3) is his additional application for removal of the report for 29 May to 9 November 1999. Enclosure (4) is a memorandum reflecting that the PERB also directed removal of the report for 29 May to 9 November 1999.

g. In correspondence attached as enclosure (5), the HQMC Field Support Branch, Manpower Management Information Systems Division (MI), the office having cognizance over the subject matter of Petitioner's request to remove his page 11 entry, has commented to the effect that this request has merit and warrants favorable action.

h. In correspondence attached as enclosure (6), the Marine Corps Recruiting Command has commented to the effect that Petitioner's request to remove his page 11 entry should be approved; however, his request for removal of his RFC, reinstatement of his 8411 MOS, and recoupment of his SDA pay should be disapproved.

i. In correspondence attached as enclosure (7), the HQMC Enlisted Assignment Branch (MMEA) has also commented to the effect that Petitioner's request to remove his page 11 entry should be approved, but his requests concerning his RFC should be denied. They stated he had been relieved for cause for "failure to produce"; that his monthly production had been only .38; and that his RFC had been in accordance with applicable directives.

j. Enclosure (8) is Petitioner's rebuttal to the HQMC MMEA advisory opinion. He argued that MMEA was incorrect in stating that his RFC had been based on "failure to produce," when the actual basis was "lack of effort." He noted that the document "RS NASH RECRUITER PRODUCTION FY99" (his enclosure (10) to his application of 24 February 2000, at enclosure (2)), which covers October 1998 through March 1999, showed that his production rate was 1.33, not .38. Finally, he observed it is a requirement that a "CD" fitness report accompany a request for RFC, so the PERB action directing removal of his "CD" report covering the RFC period made the RFC defective. Petitioner's rebuttal was received without its enclosure, his application dated 23 February 2000 which, like his application at enclosure (2), requested removal of his fitness reports for 1 October 1998 to 28 May 1999 and 29 May to 9 November 1999; but this application is included in the Board's file at enclosure (9).

k. The memorandum for the record at enclosure (10) reflects that the PERB directed removal of Petitioner's "CD" fitness report for 1 October 1998 to 28 May 1999 because his reporting senior was "possibly relieved for cause."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief, specifically, removal of the contested page 11 entry.

The Board concurs with the advisory opinions in concluding that removal of the page 11 entry is warranted.

The Board substantially concurs with the MMEA advisory opinion at enclosure (7) in concluding that no further relief should be approved. While the request for RFC does not include a specific statement that Petitioner was relieved for "failure to produce," they find that this is the gist of the letter. Although his overall production rate of 2.13 contracts per month exceeded the RS Nashville's mandatory minimum of 1.80, they note that the request for his relief states that his rate was only .38 for 1 October 1998 to 31 May 1999. They recognize that the document "RS NASH RECRUITER PRODUCTION FY99" cited by Petitioner does show his production as 1.33, but they observe that this was for October 1998 to March 1999 only, and that it was still below the mandatory minimum. They note that misconduct is not required as a basis for RFC. They are unable to find any misrepresentation of the preliminary inquiry findings, noting that the final version of the RFC request did not allege misconduct. While they agree with Petitioner that the CO, RS Nashville memorandum to all recruiters did not mention RFC as a response to recruiting

shortfalls, they noted that it did not preclude such action either. The basis for removal of the "CD" fitness report for 1 October 1998 to 28 May 1999 did not convince them that the RFC was unjust, particularly in light of the statement in the RFC request that Petitioner had told his CO he "quit because he could not recruit for the Marine Corps in good conscience." Finally, they find that the PERB action directing removal of this report, in itself, did not make the RFC defective, since a "CD" report had, in fact, been submitted as required.

In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's record be corrected by removing his service record page 11 ("Administrative Remarks (1070)") entry dated 11 January 1999. This is to be accomplished by physically removing the entry or obliterating it so it cannot be read, rather than lining through it.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.


d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


For W. DEAN PFEIFFER
Executive Director

1610
MMER/PERB
20 DEC 2000

From: Commandant of the Marine Corps
To: Staff [REDACTED] C

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C
(b) MCO P1400.32B (Chapter 3)

1. Per reference (a), the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness report:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
9 Nov 99	[REDACTED]	990529 to 991109 (TR)

2. There will be inserted in your Naval record a memorandum in place of the removed report containing appropriate identifying data concerning said report. The memorandum will state that the report has been removed by order of the Commandant of the Marine Corps and may not be made available to selection boards and other reviewing authorities; that such boards may not conjecture or draw any inference as to the nature of the report. The Automated Fitness Report System will be corrected accordingly.

[REDACTED]
By direction

5473-00



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1070
MI--
5 OCT 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED]

1. We reviewed Staff Sergeant [REDACTED] application and -- supporting documents concerning his request for removal of the Administrative Remarks (1070), NAVMC 118(11) page 11 entry dated 990111 from his service records.
2. MCO P1070.12J, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 which are considered matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book or the Marine's automated record and will be useful to future commanders.
3. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation. In cases involving unsatisfactory performance, pattern of misconduct, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriate counseling and personnel records.
4. MCO 1610.12, the U.S. Marine Corps Counseling Program states that:
 - a. "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance.
 - b. Increase individual performance and productivity through counseling and thereby increases unit readiness and effectiveness.

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED] SMC

c. Counseling enhances the leader's ability to improve the junior's performance."

5. The following comments/opinions concerning the page 11 entry dated 990111 are provided:

a. The counseling entry does not meet the elements of a proper page 11 counseling in that it fails to list specific deficiencies in his conduct and performance as listed in the first sentence. The page 11 entry also does not contain specific recommendations for corrective action for Staff Sergeant [REDACTED] to be "afforded a reasonable opportunity to overcome those deficiencies" per paragraph 6105 of the Marine Corps Separation Manual and fails to offer where assistance can be found.

b. The page 11 entry must allow a Marine to annotate whether or not they choose to make a rebuttal statement and if made, a copy of the statement is filed in the service record. If the Marine refuses to sign, paragraph 4010.2.e of the IRAM states that an additional entry is required to record that the "Marine refuses to acknowledge this entry" and a subsequent counter entry must immediately follow to verify that "the Marine was made aware of the adverse/derogatory entry."

c. Staff Sergeant [REDACTED] did not acknowledge the counseling entry or annotate his desire whether "to" or "not to" submit a written rebuttal statement per paragraph 4010.2.e of the IRAM.

6. We defer advisory opinion and recommendations concerning the relief for cause from recruiting duty to CMC (MCRC).

7. In view of the above, it is recommended that the Board approve Staff Sergeant [REDACTED] request for removal of the Administrative Remarks (1070), NAVMC 118(11), page 11 entry dated 990111 from his service records.

8. Point of contact is Mr. [REDACTED]

Acting
Head, Field Support Branch
Manpower Management Information
Systems Division



UNITED STATES MARINE CORPS
MARINE CORPS RECRUITING COMMAND
3280 RUSSELL ROAD
QUANTICO, VA 22134-5103

IN REPLY REFER TO

1070
G1
24 OCT 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] BMC

Ref: (a) BCNR Docket #05473-00
(b) MCO P1070.12J

1. In response to reference (a), we have reviewed Staff Sergeant [REDACTED] petition, OMPF, and the provisions of reference (b). Based on our review, we recommend that the portion of the petition in regards to the page 11 entry be approved.

2. Upon review of Staff Sergeant [REDACTED] relief for cause package, in which the relief was based on Staff Sergeant [REDACTED] attitude, lack of commitment, questionable judgement, and effectiveness as a recruiter, we recommend that the portion of the petition in regards to the relief for cause, reinstatement of the 8411 MOS, and recoupment of SDA pay be disapproved.

[REDACTED]
[REDACTED] M
Chief of Staff



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
100171
MMEA
27 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR DOCKET [REDACTED] OF STAFF S [REDACTED]
[REDACTED] MC

1. We have reviewed Staff Sergeant [REDACTED] and concur with Marine Corps Recruiting Command's recommendation that the page 11, dtd 990111 be removed from SNM's official record.

2. Per MCRC's memorandum, Staff Sergeant [REDACTED] from recruiting duty was based on a demonstrated poor attitude, lack of commitment, questionable judgment, and effectiveness as a recruiter. This headquarters relies strongly on the recommendations made by the Commanding General and Commanding Officers of the Recruiting Command concerning recruiter reliefs. These officers have direct observation of the Marines in question and a complete understanding of the recruiting business and mission. We concur with CG MCRC that the relief not be removed from the record, the 8411 MOS not be reinstated, and that no SDA pay recoupment be made.

3. Staff Sergeant [REDACTED] relieved for "failure to produce" (accomplish his mission as a Marine Recruiter). During the eight months prior to his relief, he produced only .38 net contracts per month - well below acceptable levels - despite repeated instruction and counseling. Staff Sergeant [REDACTED] was in complete adherence with the Marine Corps Guidebook for Recruiting Operations Volume III, was reviewed at the District level, Region level, and CG Marine Corps Recruiting level and should stand as is.

4. Point of contact [REDACTED]

[REDACTED]

[REDACTED]

CC-13

ASSISTANT HEAD, ENLISTED ASSIGNMENT BRANCH