



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

BJG
Docket No: 5815-01
22 March 2002

SSGT [REDACTED] USMC
[REDACTED]
[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 21 March 2002. 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 23 July 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 you were not counseled during the pertinent reporting period, noting that the reporting senior stated, in section G.3 of the contested fitness report, that he had counseled you verbally just before the incident during the deployment of 17 January to 24 February 1999. They noted that counseling need not be in writing. They found section A.5.a of the contested report was correctly marked to reflect the report was adverse, because of the adverse mark of "A" in section G.3, "judgment." They found no inconsistency between this mark and the many other more favorable aspects of the report. They observed that the requirement for reporting senior comment in section I was not established until 21 October 1999, after the reporting period concerned. They further observed that the reporting senior was obligated to document performance deficiencies that occurred during the reporting period, regardless of the length of time since you had received pertinent counseling. As the third sighting officer merely signed the fitness report in question without

comment, the Board found that additional referral to you, so you could see what he had written, was not warranted. Finally, they found that neither your subsequent better fitness reports, nor your having had less than a year as a staff sergeant, served to invalidate the report at issue.

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

5815-01



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

IN REPLY REFER TO:
1610
MMER/PERB
23 JUL 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 24 Apr 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 18 July 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 981001 to 990227 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report was used as a counseling tool and that the marks do not justify an "adverse" report. To support his appeal, the petitioner furnishes his own statement, a copy of the challenged fitness report, and a copy of a page 11 from his Service Record Book (SRB).

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. Although the petitioner states he "made a mistake" by not appending a rebuttal, we note that he was given that opportunity on two separate occasions: once by the Reporting Senior; and once by the Reviewing Officer. By omitting a statement in his own behalf, the petitioner passively concurred in the accuracy of the evaluation and indicated he had no extenuating or mitigating circumstances to present. Nevertheless, and notwithstanding his own statement and the page 11 entry, the Board finds absolutely nothing to question the accuracy or fairness of the report.

b. The Board acknowledges the date of the official counseling entry is after the ending date of the report. However, such entries are often late and should not be used to invalidate the formal recording of deficient performance. This is especially germane in the petitioner's case since he was

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previously counseled (verbally) concerning his unprofessional behavior. As a matter of interest, the Board notes the petitioner also chose to forego a statement in response to the page 11 counseling entry.

c. Finally, and contrary to the petitioner's belief, the Board does not find that the report has been used as a counseling tool. As previously stated, the report appears to reflect demonstrated performance/characteristics.

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