



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

SMC
Docket No: 06881-99
23 February 2001

SG [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear 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.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested fitness report for 20 February to 19 June 1998 by removing the reviewing officer comments, the CMC letter dated 23 March 1999 and the Standard Addendum Page dated 26 July 1999.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 February 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 (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 30 November 2000, and the advisory opinions from HQMC dated 5 January and 29 June 2000, copies of which are 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 and the advisory opinions in finding no further relief to be warranted. They were unable to find that the remaining contested matters were submitted because of the "personal convictions" of the reviewing officer.

Concerning the report dated 11 June 1999 of the investigation of your command, the Board noted that your commanding officer (CO), the reviewing officer for the contested fitness report, was relieved; they also noted the findings concerning the adverse command climate he fostered, and his influence on the investigation into your own alleged misconduct. However, they were unable to find any of the remaining matters you contest were not

justified. They noted that the officer who investigated you was not appointed until 25 November 1998, so his report could not have influenced the contested fitness report or the service record page 11 entries at issue. They were unable to find how, if at all, his report influenced your nonjudicial punishment or your removal from the 1998 staff sergeant selection list, nor could they find how he changed his opinions following the review of his report by the CO.

In view of the above, your application for relief beyond that effected by CMC 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

Enclosures

6881-99

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



IN REPLY REFER TO:
1610
MMER/PERB
30 NOV 2000

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
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 25 Oct 99
(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 November 2000 to consider Sergeant [REDACTED] implied request in reference (a) to remove his fitness report for the period 980220 to 980619 (TR). Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that submission of the report was intentionally delayed to allow for the outcome of an NCIS investigation to be known.

3. In its proceedings, the PERB concluded that:

a. The evaluation by the Reporting Senior is completely "outstanding", with no Section B mark below that rating. As such, the Board finds nothing objectionable with Lieutenant [REDACTED] delay in completing the appraisal. Likewise, we find nothing to show that his evaluation is somehow biased or inaccurate.

b. Given the documentation furnished with reference (a), the Board finds the Reviewing Officer's comment to be both premature and prejudicial. They do not, however, conclude that removal of the entire report is warranted. Instead, they have directed elimination of the complete "Reviewing Officer's Certification", along with the two pages following the report (i.e., the CMC letter of 23 Mar 99 and the Standard Addendum Page of 26 Jul 99). Additionally, the Board has directed appropriate modification to the petitioner's Master Brief Sheet.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Sergeant [REDACTED] official military record. The limited corrective action identified in subparagraph 3b is considered sufficient.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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5. The case is forwarded for final action.

[REDACTED]

[REDACTED] N
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps

6881-99

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



IN REPLY REFER TO:

1070
MI

5 JAN 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Encl: (1) Copy of Offenses and Punishment (NAVMC 118(12))

1. We reviewed Sergeant [REDACTED] application and supporting documents concerning his request for removal of the Administrative Remarks page 11 entries dated 980804 and 981125, Offenses and Punishment page 12 entry dated 990311 and CMC letter 1450/3 MMPR-2 dated 5Feb99 from his service record.

2. MCO P1070.12J, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make Service Record Book (SRB) 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 SRB or the Marine's automated record and will be useful to future commanders.

3. A proper page 11 entry must meet certain elements in that it must list specific deficiencies and recommendations for corrective action, where assistance can be found and state that the Marine was provided the opportunity to make a rebuttal statement. The Marine must annotate whether or not they choose to make such a statement and if made, a copy of the statement is filed in the service record.

4. A page 12 entry (Offenses and Punishment, NAVMC 118(12)) is designed for recording offenses and punishment, and for establishing command jurisdiction at time of the offense. These entries may be signed by the commander or a designated representative who will sign "by direction".

5. The following comments concerning the page 11 entry dated 980804 are provided:

a. The page 11 entry does meet the elements of a proper page 11 counseling.

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

b. Sergeant [REDACTED] did not submit documentation to support his claim of injustice, however, upon request by this office, he provided information which assisted in our efforts in contacting his former supervisor, Master Sergeant [REDACTED].

c. Master Sergeant [REDACTED] during a telephone conversation on 28 December 1999, stated that while serving as Sergeant [REDACTED] supervisor, did counsel Sergeant [REDACTED] on his conduct deficiencies.

d. The commander determined that the information contained in the entry was of permanent value to Sergeant [REDACTED] career, thereby documenting this event per the provisions of the IRAM.

e. Master Sergeant [REDACTED] confirmed on 28 December 1999 that the information contained in the entry was the commander's interpretation of a lawful order and had determined that this event was of significant importance to document it by a page 11 counseling entry.

6. The following comments concerning the page 11 entry dated 981125 are provided:

a. Though quite lengthy, the page 11 entry does meet the elements of a proper page 11 counseling entry.

b. The commander determined that the information contained in the entry was of permanent value to Sergeant [REDACTED] career, thereby documenting this event per the provisions of the IRAM.

c. Master Sergeant [REDACTED] stated on 28 December 1999 that while serving with MACG-18, he also served in an additional duty capacity as the MACG-18 EEO advisor. It was his responsibility to advise the commander on possible allegations of misconduct by members of the unit. Additionally, he had stated that Sergeant [REDACTED] conduct, while deployed to Cobra Gold in Thailand, was the subject of several investigations and that the information contained in the entry was of significant importance to have documented this event by a page 11 entry.

7. The following comments concerning the Offenses and Punishment page 12 entry dated 990311 are provided:

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

a. When nonjudicial punishment is imposed as authorized by Article 15 of the Uniformed Code of Military Justice and the Manual for Courts-Martial, entries will be made on the NAVMC 118(12) as authorized by the IRAM.

b. The Offenses and Punishment (NAVMC 118(12)) entry dated 990311 was not part of the BCNR application nor part of the Official Military Personnel File (OMPF). Per the request by this office, Sergeant [REDACTED] provided a copy and is included as enclosure (1).

c. The Offenses and Punishment (NAVMC 18(12) entry dated 990311 does meet the elements of a proper page 12 entry.

d. Master Sergeant [REDACTED] confirmed on 28 December 1999 that while serving as the MACG-18 EEO advisor, the information contained in the entry was the result of several investigations pertaining to Sergeant [REDACTED] conduct while deployed to Cobra Gold in Thailand.

8. The following comments concerning the CMC letter 1450/3 MMPR-2 dated 5Feb99 are provided:

a. All relevant adverse material forwarded to the Commandant of the Marine Corps (CMC) (MMSB-20) is subject to rules per MCO P1070.12J, paragraph 1000.5.c. CMC will microfiche letters issued by the CMC to an officer or enlisted member concerning failure(s) to meet Marine Corps standards of professional performance and/or conduct.

b. The adverse letter reflects unfavorably upon Sergeant [REDACTED] personal and professional qualifications.

c. The adverse letter qualifies as "other reports, statements, or correspondence of a military nature" that must be filed in Sergeant [REDACTED] OMPF per paragraph 1000.5.c(2).

d. The adverse letter was the result of a report to CMC (MMPR-2) by Sergeant [REDACTED] commander and endorsed up through the chain of command, to include Sergeant Worthem's Commanding General.

9. In regards to Sergeant [REDACTED] request for removal of a fitness report for period of 980220 to 980619, it is recommended that CMC (MMER) provide advisory opinion and recommendations.

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

10. Sergeant [REDACTED] implies that he was the victim of a personal conviction of one individual, his commander, and not the recipient of fair and unbiased justice. Information provided in the command investigation by Colonel [REDACTED] dated 11 June 1999 is irrelevant. The incidents of misconduct by Sergeant [REDACTED] still happened.

11. In view of the above, it is recommended that:

a. Disapprove Sergeant [REDACTED] request for removal of the Administrative Remarks page 11 counseling entries dated 980804 and 981125 from his SRB and OMPF.

b. Disapprove Sergeant [REDACTED] request for removal of the Offense and Punishment page 12 entry dated 990311 from his SRB and OMPF.

c. Disapprove Sergeant [REDACTED] request for removal of the CMC letter 1450/3 MMPR-2 dated 5Feb99 from his OMPF.

12. Point of contact is [REDACTED]

[REDACTED]

Head, Field Support Branch
Manpower Management Information
Systems Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
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0-881-997

IN REPLY REFER TO:

1400/3

MMPR-2

29 Jun 00

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

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

Ref: (a) CMC ltr 1450/2 MMPR-2 of 5 Feb 1999

1. Sergeant [REDACTED] requested reinstatement of his selection to staff sergeant for the 1998 Staff Sergeant Selection Board.
2. The Commandant of the Marine Corps (CMC) administratively deleted Sergeant [REDACTED] from the 1998 Staff Sergeant Promotion List after his failure to maintain the high standards of personal and professional performance expected of a Staff Noncommissioned Officer. The reference applies.
3. Sergeant [REDACTED] will be eligible for promotion consideration by subsequent Staff Sergeant Selection Boards provided he remains on active duty.

[REDACTED]
Assistant Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps