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

BJG
Docket No: 7832-02
7 October 2002

SGT [REDACTED] USMC

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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 October 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 30 August 2002, 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 supporting letter of 6 March 2002 from your current reporting senior did not persuade them that the contested fitness report "was a mistake." 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
AUG 30 2002

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] SMC

Ref: (a) Sergeant [REDACTED] DD 149 of 27 Jan 02
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 8 August 2002 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990119 to 990331 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that at the time he failed his physical fitness test (PFT) he was still recovering from surgery that had been performed prior to arriving on Okinawa. It is his belief that he should not have been forced to take the PFT nor be penalized with an adverse fitness report. To support his appeal, the petitioner furnishes excerpts from his medical record.

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. When the petitioner acknowledged the adverse nature of the report (evidence his signature in Section J2), he clearly indicated he had no statement to make. In so doing, he passively concurred in the accuracy of the overall evaluation without presenting any matters in extenuation or mitigation. Had there been any question as to the petitioner's medical condition, it should have been surfaced at that time. To do so more than three years after the fact lacks timeliness.

b. The medical documentation included with reference (a) corroborates the petitioner's surgery on 21 December 1998. It also details a follow-up appointment on 23 December 1998 where it was concluded the petitioner was "doing well" and that he was

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placed on light duty for two weeks. There is no other documented medical examination/follow-up subsequent to 23 December 1998.

c. With all due respect to the Senior Medical Officer [REDACTED] who provided the Memorandum of 10 December 2001, the Board is simply not persuaded or convinced that a review of the petitioner's outpatient record more than two years after the fact is proof positive that the petitioner's medical condition or acclimatization resulted in his PFT failure. This is further supported by the fact that the petitioner failed only the pull-up portion of the PFT. Surely, if he was suffering from surgery some four months earlier, and had not yet adjusted to the Okinawa climate, the three-mile run portion of the PFT would have been affected.

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