



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

BJG
Docket No: 6850-01
27 February 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 27 February 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 24 August 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. Accordingly, 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
24 AUG 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 ██████████ ██████████ USMC

Ref: (a) SSgt ██████████ DD Form 149 of 13 Jun 01
(b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 22 August 2001 to consider Staff Sergeant ██████████ petition contained in reference (a). Removal of the fitness report for the period 981001 to 991231 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends there were extenuating medical circumstances surrounding his failure of the physical fitness tests (PFTs). To support his appeal, the petitioner furnishes his own statement and several items of medical documentation.

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 Item J2), he clearly indicated he had no statement to make. In so doing, he passively concurred in the accuracy of the recorded information and had nothing to present in extenuation or mitigation. The issues he now raises in reference (a) should have been surfaced at the time the report was prepared. To do so well over a year after the fact lacks both timeliness and credibility as well. In addition, the Board stresses that reference (b) specifically states that the appeal system is not a substitute for proper resolution of an adverse fitness report.

b. In reviewing the medical documents furnished with reference (b), the Board finds nothing to indicate he was not physically qualified to take the PFT, or a partial PFT, during the windows of December 1998 and 1999. Even ██████████'s letter at enclosure (3) to reference (a) does not state the petitioner

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was incapable of performing the PFT during the periods he was tested.

c. There is a firm and recognized system in place for Marines who are ailing. The petitioner failed to obtain a medical exemption and was apparently physically able to perform the two failed PFTs. There is simply no convincing documentation to the contrary.

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