



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

BR

BJG
Docket No: 2269-03
27 October 2003

SGT [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.

You requested removal of the service record page 11 ("Administrative Remarks (1070)") entries dated 8 and 10 April 1996 and the adverse fitness report for 5 June to 8 July 2002. You also requested, by implication, removal of your failure of selection for promotion to staff sergeant, on the basis that the promotion board improperly considered the contested fitness report without your rebuttal.

Your request to remove your failure of selection to staff sergeant was not considered, as you have not exhausted your administrative remedies. You may ask Headquarters Marine Corps (HQMC) (Code MMPR-2) to grant you remedial consideration for promotion; and if you are promoted as a result of selection by a remedial promotion board, your failure of selection for promotion will be removed by HQMC without action by this Board.

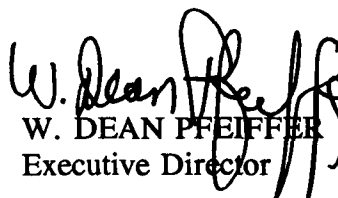
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 October 2003. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 16 September 2003, and the advisory opinion from the HQMC Manpower Management Information Systems Division (MIFD), dated 20 May 2003, 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 warranting removal of the contested page 11 entries or the fitness report at issue. In

this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinion. 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

Enclosures



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

IN REPLY REFER TO:
1610
MMER/PERB
SEP 16 2003

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], [REDACTED] USMC

Ref: (a) Sgt. [REDACTED] DD Form 149 of 14 Apr 03
(b) MCO P1610.7E w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 10 September 2003 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 20020605 to 20020708 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report at issue is inaccurate, erroneous, and unjust. It is his position that the incident recorded in the report had already been considered in an earlier performance evaluation (20020219-20020601 (FD)) and resulted in a low ranking in Item K3 (comparative assessment). This action, he states, is confirmed in a letter from the Reviewing Officer of record for that report ([REDACTED]). The petitioner points out that he was not a member of Headquarters and Service Battalion, 3d Force Service Support Group, when the incident occurred and that the report under consideration is a case of "double jeopardy." Finally, the petitioner alleges that an incomplete report was provided to the Staff Sergeant Promotion Selection Board.

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. A review of the petitioner's fitness report for the period 20020219 to 20020601 (FD) fails to reveal any mention of the adversity. Neither does it contain any reference to the incident. The marks and comments by both the Reporting Senior and Review Officer of that report are all commendatory. Major [REDACTED] stated in his advocacy letter that while the misconduct was

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

not documented in the report, it did factor into his marking in Item K3. That fact notwithstanding, [REDACTED] made no reference to this "lapse in judgment" in his comments in Item K4. Additionally, the Board observes that his placement of the petitioner in Item K3 is consistent with the tone of his comments and the overall marks and comments of the Reporting Senior. That [REDACTED] considered the incident when completing that fitness report was his prerogative and constitutes neither an error nor an injustice.

b. Once the petitioner returned from his temporary duty assignment, and when the incident had been fully investigated, the petitioner's parent command disposed of the allegations via an administrative 6105 counseling entry. It was appropriate to document the 6105 entry in Section I of the challenged fitness report as the misconduct was relevant to the petitioner's performance and he was afforded an opportunity to respond. While the previous Reviewing Officer [REDACTED] may have factored this misconduct into his mark in Item K3, the adversity in the fitness report at issue is a separate matter (i.e., the issuance of a related 6105 entry). Since the report is a "not observed" evaluation, no markings/comments were affected. Consequently, the petitioner's argument of "double jeopardy" is considered without merit.

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]'s official military record.

5. The case is forwarded for final action.

[REDACTED]

Quilperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



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

IN REPLY REFER TO:

1070

MIFD

20 MAY 2009

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

1. Sergeant [REDACTED] application with supporting documents has been reviewed concerning his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 960408 and 960410 from his service records.
2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 concerning matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book (SRB) or the Marine Corps Total Force System (MCTFS) record, and which will be useful to future commanders. MCO P1400.32, Marine Corps Promotion Manual, Volume 2, Enlisted Promotions, requires a page 11 entry of a Marine who is eligible but not recommended for promotion. 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.
 - c. Counseling enhances the leader's ability to improve the junior's performance."
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 the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual (MCO P1900.16), paragraph 6105, sets forth policy pertaining to counseling and rehabilitation.

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

4. The following comments/opinions concerning the page 11 entry dated 960408 are provided:

a. The counseling entry does meet the elements of a proper page 11 counseling concerning Sergeant [REDACTED]'s promotion status in that it lists the specific month he was eligible but not recommended, what grade that he was eligible to be promoted to, specific deficiencies or reasons why he was not recommended for promotion, and states that Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, the entry affords him an opportunity to annotate whether or not he choose to make such a statement and if made, a copy of the statement would be filed on the document side of his SRB. Sergeant [REDACTED] refused to acknowledge the counseling entry with his signature, requiring an entry to be immediately added, indicating that he was aware of the entry and he refused to acknowledge it. Additionally, paragraph 4012.3e explicitly states that when a Marine refuses to acknowledge a counseling entry, they forfeit the opportunity to make a rebuttal statement.

b. Sergeant [REDACTED] claim that these entries are erroneous and unjust because the page 11 was "removed from my record." is irrelevant. A copy of the original page 11 that is currently on file in his OMPF is properly completed and appropriately filed per the instructions contained in the IRAM. The page 11 that Sergeant Glaister includes in his application shows that the page appears to have been reconstructed, deleting those two page 11 entries concerning his promotion status for the 1 April 1996 promotion period and does not contain an entry indicating: 1) that this page was reconstructed, 2) the date it was accomplished, and 3) the reason(s) why. It is possible that a number of events may have taken place leading up to why the page was reconstructed in order to remove these entries, however, this does not negate the fact that those entries were properly prepared, Sergeant [REDACTED] was aware of his promotion eligibility for the 1 April 1996 promotion period, and the reasons why he was not recommended. These entries remain an official document recording important information concerning Sergeant [REDACTED]'s history of his military service and should be maintained on file in his OMPF. Additionally, Sergeant [REDACTED] commander utilized all available leadership tools as stated in paragraph 2 and 3 above, and documented those actions by a page 11 entry.

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

5. In view of the above, it is recommended that the Board for Correction of Naval Records disapprove Sergeant [REDACTED] request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 960408 and 960410 from his service records. However, if the Board for Correction of Naval Records finds that Sergeant [REDACTED] records are in error or an injustice was committed, approve the removal of the page 11 entries from his service records. Point of contact is [REDACTED] DSN: 278-9049.

[REDACTED]

Director,
Manpower Management Information
Systems Division