



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

on

BJG
Docket No: 4221-03
17 September 2003

[REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Lieutenant [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 11 September 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 Performance Evaluation Review Board (PERB), dated 6 May 2003, a copy of which is attached. The Board also considered your rebuttal letter dated 5 August 2003.

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.

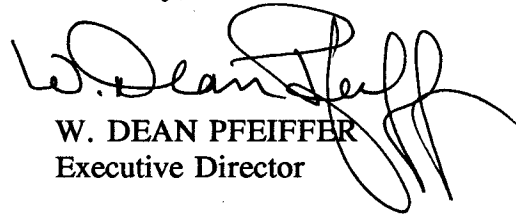
The Board was unable to find the contested fitness report was used as a counseling document, or as punishment, noting that you concede the reviewing officer counseled you because you spoke harshly to a staff sergeant; and you say the reporting senior told you he considered training sessions among the staff to be counseling sessions for you. The Board observed that counseling need not be written or formal. The Board was unable to find you were not advised of perceived deficiencies. The Board was likewise unable to find that the contested fitness report contained false statements, that it was based on hearsay, that it was based on recommendations from your previous command, or that it was the result of bias against you for having requested and accepted orders. Finally, the Board was unable to accept your allegation that the reviewing officer "was confirmed by the Regimental Adjutant to have several illegal Government Travel Card (GTC) charges and attempted charges in brothels in

Australia and was known among his subordinate officers and enlisted alike to lie and treat subordinates inappropriately for self gain."

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
MAY 06 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 FIRST
LIEUTENANT J [REDACTED] USMCR

Ref: (a) 1stLt [REDACTED] DD Form 149 of 5 Feb 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 5 May 2003 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 020703 to 021104 (TR) 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 he was not afforded an opportunity to initiate action to correct the noted deficiencies. He also argues that the report was a "personal attack" and less than an objective assessment of his performance.

3. In its proceedings, the PERB concluded that, with one minor exception, 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, he initially elected to omit any statement in his own behalf. Subsequent to his transfer, the petitioner was contacted by a member of the command and advised that it would be in his best interests to append a statement. He availed himself of that opportunity (see first paragraph of the Reviewing Officer's Addendum Page of 9 December 2002).

b. In the petitioner's rebuttal to the fitness report, he surfaced his disagreements and concerns with the overall evaluation. The Reviewing Officer meticulously adjudicated each of the petitioner's objections and disagreements and dispelled any perception that the report was not a factual and objective representation of his demonstrated performance.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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LIEUTENANT [REDACTED] USMCR

c. Paragraph 5005.1 of reference (b) requires an adverse officer fitness report to be sighted by a general or flag officer within the chain of command. That did not occur (NOTE: At the time, Colonel [REDACTED] selected to the grade of Brigadier General; he has since been promoted). The Board is taking action to remedy that matter and will have the report administratively Third Sighted at this Headquarters by the Director, Personnel Management Division. The Board concludes this is completely acceptable since there is nothing further to adjudicate.

d. Other than his own statement, the petitioner has furnished absolutely nothing to document that the report is inaccurate or how he rates more than what has been recorded. In this regard, the Board finds the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or an injustice.

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

5. The case is forwarded for final action.

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps