



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

BJG
Docket No: 7244-03
16 October 2003

[REDACTED]

Dear Master 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 2 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 Performance Evaluation Review Board (PERB), dated 27 August 2003, 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 Board was unable to find the contested fitness report was in reprisal for your request mast. The Board did not consider the reporting senior's comments to be unduly vague. The Board was unable to find the reporting senior omitted from the narrative any billet accomplishments that should have been mentioned. In disagreement with the PERB, the Board found the reviewing officer did fail to adjudicate your contention that the reporting senior had omitted your billet accomplishments; but it did not consider this a material error warranting removal of the contested report. The Board was unable to find you received counseling too late to be helpful, noting that counseling takes many forms, so the recipient may not recognize it as such when it is provided. The Board was unable to find you were marked down in leadership for maintaining that certain Marines rated adverse fitness reports for failing the physical fitness test or having excess body fat. Finally, contrary to the PERB, the Board found that the third sighting officer failed to adjudicate any of the issues raised in

your rebuttal to the reviewing officer's comments. However, the Board found that this was a harmless error, inasmuch as three different investigations of your complaints failed to find them meritorious.

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

7244.03

IN REPLY REFER TO:
1610
MMER/PERB
AUG 27 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
MASTER SERGEANT [REDACTED] USMC

Ref: (a) MS [REDACTED] DD Form 149 of May 03
(b) MCO P1610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 20 August 2003 to consider Master Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 20011001 to 20020115 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is inaccurate and misrepresents her overall performance during the period. This, she believes, is due to factual inaccuracies, lack of information, and a departure from correct counseling and reporting procedures. The petitioner details those areas where she opines that violations of reference (b) have occurred and alleges that the adverse fitness report at issue was in retaliation for exercising her right to Request Mast. The petitioner further observes the report is a blemish on her career and that there was no "catastrophic occasion" cited in the report that would give rise to a relief for cause. To support her appeal, the petitioner furnishes her own detailed statement, copies of her previous fitness report and the one at issue, copies of counseling sheets, a copy of press coverage for the visit to Marine Corps Recruit Depot, San Diego, by [REDACTED] Lt [REDACTED] copy of physical fitness test (PFT) tally/body fat sheets, and a copy of an officer's voluntary statement.

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. At the outset, and contrary to the petitioner's arguments, the Board concludes that both the Reviewing Officer

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and Adverse Sighting Officer (Colonel [REDACTED] and Major General [REDACTED] respectively) fully adjudicated and resolved all of the petitioner's factual disagreements. That she disagrees and believes otherwise is an issue the Board believes is neither grounded in fact nor per reference (b).

b. The matter of the late submission of the challenged fitness report was addressed by Colonel [REDACTED] (page "1 of 1" on his Addendum Page of 24 May 2002). In this regard, we point out that neither this Headquarters nor the PERB condone the untimely submission of fitness reports. That single issue, however, does not serve to invalidate an otherwise administratively and procedurally sound performance appraisal. This is especially germane in this case where Colonel [REDACTED] gave specific reasoning for the report's tardiness.

c. Regardless that the public affairs event involving Mr. [REDACTED] may have been a success, the petitioner clearly did not follow the direction of her Reporting Senior. For that, she was correctly held accountable and the situation was properly recorded via the performance evaluation system. Simply stated, there is no error or injustice in accurately reporting adverse performance.

d. The Board has learned there were three investigations done surrounding this timeframe: a Preliminary Inquiry by a Lieutenant Colonel; an IG initiated as per the petitioner's visit to the IG (14 EEO claims); and a Command Investigation by yet another Lieutenant Colonel. That third investigation reinforced the accuracy of the Preliminary Inquiry and further concluded that the second investigation by the IG was correct in its conclusion that the 14 claims were unfounded and/or unsubstantiated.

e. The Board finds no validity or relevance to the document included as enclosure (6) to reference (a). It contains no name, signature, or anything else by which to identify the author. Finally, and notwithstanding the petitioner's own statement and the items furnished in support of her appeal, the Board finds nothing to show that the report is anything other than a fair and accurate assessment of her performance during the stated period.

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