



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

BJG
Docket No: 8245-08
25 September 2008

[REDACTED]

[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 25 September 2008. 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 21 August 2008, 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, VA 22134-5103

IN REPLY REFER TO:

1610
MMER/PERB
AUG 21 2008

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
[REDACTED]

Ref: [REDACTED] DD Form 149 of 30 Apr 08
(b) MCO P1610.7E w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 31 July 2008 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 20020701 to 20020808 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner received this adverse fitness report for receiving non-judicial punishment (NJP) for being involved in an altercation. He submitted a copy of the NJP/Captain's Mast and a copy of a Career Counseling report in support of this appeal.

3. In its proceedings, the Board concluded that the report is administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The petitioner does not dispute the circumstances leading to the adversity of this report in either his rebuttal to the report or in this appeal. In fact, he takes full responsibility for his actions in his rebuttal.

b. His sole argument is that he was told by Senior Enlisted and Officers in his chain of command that this report will "reflect on his record for five years" before he can be considered for promotion. The Board found that there is no such regulation, SOP or common practice. The alleged five year waiting period does not exist.

c. The petitioner also argues that the nature of the offense did not warrant the penalty. This argument would have been more appropriately addressed in an appeal to the NJP, or in the

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[REDACTED]

rebuttal to the report. In either case, the alleged injustice could have been adjudicated by those best in the position to know or discern the facts and circumstances surrounding this incident. The Board found that he did not submit anything to substantiate or even explain this argument.

d. In conclusion, the Board found that the petitioner indeed received NJP for which he accepted full responsibility for his actions. As such, this is an appropriately written report in accordance with reference (b) to document the petitioner's disciplinary action.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

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