DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 23-99
19 April 1999

SSGT [redacted] USMC
[redacted]

Dear Staff Sergea[redacted]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10, 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 15 April 1999. 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 28 December 1998, 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. They were unable to find that you were not counseled about your performance during the reporting periods in question. In any event, they generally do not grant relief on the basis of an absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, the Board found both of your contested fitness reports contain derogatory comments that make it correct for the reports to have been treated as "adverse." 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.

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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

23-99

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

IN REPLY REFER TO:
1610
MMER/PERB
DEC 2 8 1998

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 [redacted] USMC

Ref: (a) SSgt. [redacted]s DD Form 149 of 22 Oct 98
(b) MCO P1610.7B w/Ch 1-2
(c) MCO P1610.7C w/Ch 1-5

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 18 December 1998 to consider Staff Sergeant [redacted] petition contained in reference (a). Removal of the following fitness reports was requested:

a. Report A - 831001 to 840331 (SA) -- Reference (b) applies

b. Report B - 900701 to 901231 (AN) -- Reference (c) applies

2. Concerning Report A, the petitioner states that he was never involved in any "adverse situations" and that he was never counseled concerning his performance of duties. Concerning Report B, the petitioner believes that the marks in Section B are not consistent with the comments in Section C and that Item 17b has been marked "no", yet he was still required to sign Item 24 indicating the report was "adverse." To support his appeal, the petitioner provides a Recruiting Award for December 1990.

3. In its proceedings, the PERB concluded that both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Simply stated, the petitioner has failed to meet the burden of proof necessary to establish the existence of an error or an injustice in either report. The reports contain no internal inconsistency and the petitioner has failed to prove that he was not counseled during the respective reporting periods.

b. Reports A and B were correctly marked "no" in Item 17b since neither evaluation met the criteria for a marking of "adverse" in Item 17b. Per references (b) and (c), a marking of "yes" in Item 17b indicates that adverse material or reports were received from outside the reporting chain. Item 17b **is not**, as the petitioner believes, marked "yes" simply because the overall

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evaluation is adverse. Succinctly stated, he has misinterpreted the provisions of references (b) and (c).

c. While the Recruiting Award speaks well of the petitioner's accomplishments, the Board is haste to point out that the commendation was for one month out of a six-month reporting period. This does not negate or somehow call into question the accuracy of Report B.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports 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