



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

BJG
Docket No: 35-99
21 April 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [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 23 December 1998, a copy of which is attached. They also considered your rebuttal letter dated 14 January 1999, and a Marine Corps major's facsimile transmission dated 3 February 1999.

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 report of the PERB.

The Board was not persuaded by your assertion, in your letter of 14 January 1999, that the information at subparagraphs 3a(1) and (2) of the PERB report was untrue. They were unable to find that you did not absent yourself from your post, whether or not you maintained radio contact. They were not convinced of a misunderstanding by your former platoon commander as to whether not you violated a direct order not to absent yourself from your duties. They were unable to find that you were not counseled about your perceived deficiencies. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. They were not persuaded that your commanding officer exerted undue influence on your reporting senior. Finally, they were unable to find that you had inadequate training to perform your duties.

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

35-99

IN REPLY REFER TO:
1610
MMER/PERB
DEC 23 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] DD Form 149 of 25 Sep 97
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 11 December 1998 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970901 to 971110 (CD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the Commanding Officer (Lieutenant Colonel [REDACTED] "ordered" the Reporting Senior (Captain [REDACTED] to write an adverse fitness report. He also alleges that Captain [REDACTED] voiced his belief that a misunderstanding occurred relative to the petitioner's violation of an order not to absent himself from his duties. To support his appeal, the petitioner provides various items, to include his own detailed account of what transpired in the command during the reporting period, a copy of the report at issue with his rebuttal, a copy of MCSF Company Bulletin 1502.4 (Annual Training Plan for CY-97) and other directives, a psychology evaluation, several character references, a copy of a community award, other fitness reports, and a photograph of a tee-shirt insignia.

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. The PERB was concerned over the petition's allegations regarding the actions of the Marine Corps Security Force Company in handling the situation concerning Lance Corporal [REDACTED]. They were equally bothered by the petitioner's contention that the command had somehow authorized a new platoon "PT shirt" (enclosure (19) to the reference). To clarify the matters, a member of the PERB's staff contacted the command Sergeant Major who relayed the following:

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(1) The "command representative" was the petitioner! His visits to Lance Corporal [REDACTED] constituted the command's leadership. This was especially true since neither the Commanding Officer nor the Executive Officer were geographically present when the incident occurred.

(2) The tee-shirt with which the petitioner takes exception was not, as he alleges, the "new platoon PT shirt." It was designed and worn by a few members of the company to express their grief over Lance Corporal [REDACTED]'s death. The command neither authorized nor sanctioned wearing of the shirt.

b. The issues which the petitioner raises in reference (a) are the same basic contentions surfaced in his official statement of rebuttal. All were properly and thoroughly adjudicated by the Commanding Officer/Reviewing Officer, albeit in favor of the Reporting Senior. Of particular importance are the comments offered by the Third Sighting Officer (Colonel [REDACTED]) in reaching the "bottom line": The petitioner absented his post as the Marine Officer of the Day without authorization. Even the petitioner does not dispute this factual matter.

c. The supporting statements furnished with reference (a), while complimentary, do nothing to negate the accuracy of the information recorded in the challenged performance evaluation. To this end, the PERB discerns neither an error nor 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 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