



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

SMC
Docket No: 07752-98
1 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 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 1 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 27 October 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 report of the PERB.

The Board was unable to find you had a personality conflict with your reporting senior when you chose to return to the fleet. They noted that the contested fitness report need not be consistent with your report for the preceding period from the same reporting senior. They found no requirement that the narrative of the contested report include support for the marks of "AV" (average) and "AA" (above average). They were unable to find the reporting senior did not have "daily" observation of your performance, as he indicated he did. In this regard, they noted that observation need not be direct. Finally, the Board was unable to find you were not counseled on perceived deficiencies. While the statement you provided from a gunnery sergeant says there were no adverse counseling sessions to warrant the marks you were assigned, the Board recognized that he would not necessarily have observed all the counseling you might have received. 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.

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
27 Oct 98

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 18 Aug 98
(b) MCO P1610.7D w/Ch 1-2

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 14 October 1998 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 961201 to 970516 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner claims the Reporting Senior had limited observation of his performance and infers a personality conflict arose when he chose to leave his position at the Staff Noncommissioned Officer Academy. He also contends the comments in Section C do not coincide with some of the markings assigned in Section B. To support his appeal the petitioner provides his own statement and a letter from Gunnery Sergeant [REDACTED], his previous Staff Noncommissioned Officer-in-Charge.

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. Notwithstanding the petitioner's statement and the advocacy letter from Gunnery Sergeant [REDACTED], there is simply no showing here that the report at issue is anything less than an honest, accurate, and objective assessment of the petitioner's performance during the stated period. While Gunnery Sergeant [REDACTED]'s observations are insightful, the Board stresses that he was not charged with the responsibility of officially evaluating/recording the petitioner's performance. That task was levied on Sergeant Major [REDACTED]. To this end, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish the existence of an error or an injustice.

b. Contrary to the petitioner's argument, the Board discerns absolutely no internal inconsistency in the report. While he may have been accustomed to receiving reports with higher Section B

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ratings, that does not somehow call into question the validity of the assigned grades.

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.



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