



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

BJG
Docket No: 1808-99
19 April 1999

SSGT R [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 15 March 1999, 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 did not condone the untimely submission of your contested fitness report, however, they did not find this to have invalidated the report. They did not agree with your assertion that your third sighting officer contradicted himself. They found no inconsistency between his directing that you be counseled and directing that you receive a nonpunitive letter of caution. Finally, while your reviewing officer did bring up the incident for which you received the nonpunitive letter, the Board noted that he did not mention the letter itself; rather you brought up the letter in your rebuttal to the reviewing officer's comments.

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

1808-99

1610 REPLY REFER TO:
MMER/PERB
MAR 15 1999

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 25 Nov 98
(b) MCO P1610.7D w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 9 March 1999 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 970405 to 971208 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report contains substantive, inaccurate marks and contradicting comments pertaining to Sections B and C of the challenged report. He also believes there are unjust and inaccurate comments made by both the Reviewing Officer and Adverse Sighting Officer, and that those comments are based on inaccurate facts. To support his appeal, the petitioner furnishes his own detailed statement, a copy of the entire fitness report, documentation concerning an investigation into alleged sexual harassment, a copy of his fitness report for the period 980101 to 980930, two advocacy letters, and page 11 extracts from his Service Record Book (SRB).

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. As an adverse evaluation, the petitioner was correctly required to sign Item 24 and afforded an opportunity to attach a statement of rebuttal. He availed himself of that action and surfaced his disagreement with the report. Both Lieutenant Colonel [REDACTED] (the Reviewing Officer) and Colonel [REDACTED] (the Adverse Sighting Officer) thoroughly and completely resolved every issue surfaced by the petitioner. Most disagreements were resolved in favor of the Reporting Senior; however, there were some instances where the petitioner prevailed. The Board is hasty to point out that siding with the petitioner does not negate the fitness report.

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT ~~XXXXXXXXXXXX~~ SMC

b. Contrary to what the petitioner implies in his statement appended to reference (a), the Reviewing Officer may address issues not already commented on by the Reporting Senior and can also introduce new/additional adverse material. This was certainly the situation in this case and the petitioner was correctly provided the opportunity to respond (which he did).

c. The petitioner's contention that he did not receive counseling from the Reporting Senior is considered without merit. This issue was adjudicated by both Lieutenant Colonel ~~XXXXXXXXXX~~ and Colonel ~~XXXXXXXXXX~~. Both officers clearly indicate the petitioner did, in fact, receive counseling concerning his performance. In this regard, we point out that performance counseling and "official" counseling which results in a Page 11 SRB entry are two distinct and unrelated administrative actions.

d. The petitioner's argument that the Reporting Senior's mark of "Be Glad" in Item 16 is inconsistent with her comment in Section C concerning her reluctance to serve with him in combat is probably valid. However, Colonel ~~XXXXXXXXXX~~ clarifies the issue and indicates that if he had to go to war tomorrow, he would not want the petitioner in his command. This minor inconsistency (or oversight) does not substantiate an injustice nor constitute a basis for invalidating the report. Likewise, we conclude that the Reporting Senior's concurrence with the petitioner's first duty preference (MSG School) was most certainly an oversight. Again, it does not ~~invalidate the~~ report.

e. The investigative documentation and the advocacy letters from Gunnery Sergeant ~~XXXXXXXXXX~~ and ~~XXXXXXXXXX~~ do not call into question the validity or accuracy of the report. With specific regard to the advocacy letters, the Board notes that they were furnished for use by the Gunnery Sergeant Promotion Board, not as vehicles to challenge the report.

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 ~~XXXXXXXXXX~~ official military record.

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SERGEANT ROBERT [REDACTED] USMC

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