



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 3885-99

13 August 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: SSGT [REDACTED] USMC [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 26 Mar 99 w/attachments
(2) HQMC PERB memo dtd 10 Jun 99 w/encl
(3) HQMC MI memo dtd 1 Jul 99
(4) Memo for record dtd 10 Aug 99
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 1 January to 23 February 1998 and 8 May to 20 July 1998, copies of which are in enclosure (1) at Tabs A and B respectively. As indicated in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removal of the contested fitness reports. Petitioner further requested removal of his service record page 11 ("Administrative Remarks (1070)") entry dated 10 February 1998, a copy of which is at Tab C to enclosure (1). He also requested that his service record page 8a ("Military and Civilian Occupational Specialties, Schools, Tests, and Correspondence Courses (1500)") entry regarding his having "failed" drill instructor (DI) school be changed to "disenrolled," or removed completely. This page 8a is not in his Official Military Personnel File (OMPF), however, it is in his field service record. Finally, he requested that the Marine Corps Total Force System (MCTFS) entry regarding his having "failed" DI school also be changed to "disenrolled," or removed completely.

2. The Board, consisting of Mses. Gilbert and Leblanc and Mr. Zsalman, reviewed Petitioner's allegations of error and injustice on 11 August 1999, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. The contested page 11 entry (Tab C to enclosure (1)) includes the following:

...Counseled this date concerning the following deficiencies: Specifically [Petitioner's] use of poor judgment in making inappropriate comments toward a fellow Marine's wife. Specific recommendations for corrective action are to refrain from making inappropriate comments with females...

Petitioner submitted a rebuttal to the page 11 entry (also at Tab C to enclosure (1)). He said that he did not make any inappropriate comments to a fellow Marine's wife, and that the incident arose out of his having tried to warn her about a rumor. He stated that she did not appear to be upset, because she did not immediately tell her husband. He said that during the preliminary investigation, the investigating officer did not interview all the witnesses to the incident, nor did he interview other witnesses who could have offered evidence favorable to Petitioner. He contended that only he and the victim knew exactly what was said, and that the entire incident arose out of rumor and hearsay.

c. On 20 July 1998, Petitioner was dropped from DI school by reason of the page 11 counseling entry described in paragraph 3.b above. He was not eligible to attend DI school because of this entry. He was given the contested page 8a entry of "failed," and a like entry was placed in the MCTFS.

d. Petitioner now argues that the charge against him on which the page 11 entry was based was "**proven unsubstantiated**," but because of a previous event, he nevertheless received the entry. He alleges the preliminary investigation was not impartial; that a decision was made without either the investigating officer's or the equal opportunity officer's having interviewed any of his witnesses to the incident or witnesses about his character; and that the "administrative punishment awarded" was based on "impact" rather than facts. He states that the page 11 entry was a result of a misunderstanding between him and the victim. He alleges that he had been screened for DI school before receiving the page 11 entry, and then after he received the page 11 entry, his command failed to notify anyone that he was no longer eligible. He argues that he did not "fail" DI school, but was "disenrolled." He notes the end of tour award he received after leaving the command, which he says "...highlighted the significance of his presence..."

e. In correspondence attached as enclosure (3), the HQMC Manpower Information System Field Support Branch, Manpower Management Information Systems Division (MI), the office having cognizance over the subject matter of Petitioner's requests regarding the page 11 and 8a entries, has commented to the effect that the page 11 entry should stand, as it "...does meet the elements..." of a proper counseling entry. MI agreed with Petitioner that the page 8a entry should not show "failed," but they recommended changing it to "incomplete," rather than "disenrolled," as Petitioner requested:

5. Information that was reported by the Director, [DI] School stated [Petitioner] was 'dropped' from the course of instruction by reason of noncompliance due to local screening procedures not in accordance [with the applicable Marine Corps order]. This responsibility lies with his command to ensure all eligibility prerequisites are met prior to arrival for school and certified by the Commanding Officer.

6. It is recommended that the page 8a entry be corrected to read "incomplete" instead of "failed" and this information be corrected in his automated record [MCTFS] and [OMPF]...

f. The memorandum for the record at enclosure (4) documents that a member of the Board's staff contacted the Chairperson of the PERB to determine the basis for the PERB decision to remove Petitioner's two contested fitness reports. The memorandum shows the staff member was informed that PERB removed the report for 1 January to 23 February 1998 because they found it was an "adverse" report that should have been referred to Petitioner, but was not; and that they removed the report for 8 May to 20 July 1998, which records Petitioner's having been dropped from DI school by reason of the page 11 entry, because of their conclusion that had his command conducted appropriate screening before sending him to DI school, he would have been found ineligible.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting limited relief, specifically, correction of the page 8a and MCTFS entries to show "incomplete."

The Board agrees with the advisory opinion from MI at enclosure (3) in finding that the page 8a and MCTFS entries should be changed from "failed" to "incomplete."

The Board further agrees with the advisory opinion from MI in concluding that the contested page 11 entry is technically proper. Considering all the evidence in Petitioner's behalf, including that omitted from the preliminary investigation of charges against him, they are not persuaded that he did not make an "inappropriate" comment toward a fellow Marine's wife. They find no basis for his assertion that the charges were "proven unsubstantiated." Finally, they are unable to find that the page 11 entry was awarded on the basis of "impact" rather than facts.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's field service record be corrected by changing the DI school entry in his page 8a ("Military and Civilian Occupational Specialties, Schools, Tests, and Correspondence Courses (1500)") from "failed" to "incomplete"; and that the MCTFS be corrected accordingly.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

d. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



JONATHAN S. RUSKIN
Acting Recorder

ROBERT D. ZSALMAN
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director

3885-99



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

IN REPLY REFER TO:

1610
MMER
10 JUN 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] USMC

Encl: (1) Copy of CMC ltr 1610 MMER/PERB of 9 Jun 99

1. As evidenced by the enclosure, PERB removed from Staff Sergeant [REDACTED] official military record, the fitness reports for the periods 980101 to 980223 (CH) and 980508 to 980720 (TD).

2. We defer to BCNR on the remainder of Staff Sergeant [REDACTED] requests.

[REDACTED]

Head, Performance Evaluation
Review Branch
Personnel Management Division
By direction of the Commandant
of the Marine Corps

3885-99



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

IN REPLY REFER TO:
1610
MMER/PERB
JUN 9 1999

From: Commandant of the Marine Corps
To: Staff Sergeant [REDACTED] USMC

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your Naval record. Having reviewed all the facts of record, the Board has directed that your Naval record will be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
1 Apr 98	Maj [REDACTED]	980101 to 980223 (CH)
20 Jul 98	Maj [REDACTED]	980508 to 980720 (TD)

2. There will be inserted in your Naval record a memorandum in place of the removed reports. The memorandum will contain appropriate identifying data concerning the reports and state that they have been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the reports or the events which may have precipitated them, unless such events are otherwise properly a part of the official record. The Automated Fitness Report System (the data base which generates your Master Brief Sheet) will be corrected accordingly.

3. Since the remainder of your requests do not fall within the purview of this Headquarters, your appeal is being forwarded to the Board for Correction of Naval Records (BCNR) for final resolution. Further inquiries should be directed to that agency

[REDACTED]

[REDACTED]

By direction



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

IN REPLY REFER TO:

1070
MI
1 Jul 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE STAFF SERGEANT [REDACTED] E
[REDACTED] USMC

1. We reviewed Staff Sergeant [REDACTED] application and supporting documents concerning his request for removal of the Administrative Remarks page 11 entry dated 980210, from his service record and correction or removal of the Drill Instructor School entry on the Military and Civilian Occupational Specialties, Education Courses page 8a, Service Record Book entry.
2. MCO P1070.12, Marine Corps Individual Records Administrative Manual (IRAM), authorizes commanders to make Service Record Book entries on page 11 for recording information that is not, or cannot be, documented anywhere else in the Service Record Book or the Marine's automated record.
3. The counseling entry does meet the elements of a proper page 11 counseling per the IRAM. In view of this, it is recommended that Staff Sergeant [REDACTED] request for removal of the page 11 counseling entry dated 980210 be disapproved.
4. Page 8a of the Service Record Book is designed for recording military and civilian occupational specialties and skills, civilian education, service schools, technical training, correspondence courses, educational examination results, and special qualifications for all Marines.
5. Information that was reported by the Director, Drill Instructor School stated Staff Sergeant [REDACTED] as 'dropped' from the course of instruction by reason of noncompliance due to local screening procedures not in accordance with MCO 1326.6. This responsibility lies with his command to ensure all eligibility prerequisites are met prior to arrival for school and certified by the Commanding Officer.

Subj: BCNR APPLICATION IN THE CASE STAFF SERGEANT [REDACTED]
[REDACTED] 3107421 USMC

6. It is recommended that the page 8a entry be corrected to read "incomplete" instead of "failed" and this information be corrected in his automated record and Official Military Personnel File.

7. Point of contact is Mr. [REDACTED] DSN [REDACTED] or commercial [REDACTED]

[REDACTED]

Head, Manpower Information System
Field Support Branch
Manpower Management Information
Systems Division
By direction of the
Commandant of the Marine Corps

MEMORANDUM FOR THE RECORD

**BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: DSN [REDACTED] COMM [REDACTED]
FAX: DSN 224-9857, COMM (703) 614-9857, OR (815) 328-0742
E-MAIL: [REDACTED]@HQ.NAVY.MIL**

DATE: 10AUG99

DOCKET NO: 3885-99

PETITIONER (PET): SSGT [REDACTED] USMC

PARTY CALLED: [REDACTED]

TELEPHONE NUMBER: (703) [REDACTED]

WHAT I SAID: I ASKED [REDACTED] WHY THE PERB REMOVED THE TWO CONTESTED FITREPS.

WHAT PARTY SAID: RE THE FITREP FOR 1JAN-23FEB98, I WAS INFORMED THAT THE PERB BELIEVED THAT IT WAS AN ADVERSE FITREP AND SHOULD HAVE BEEN REFERRED TO PET. SINCE IT WAS NOT REFERRED, THE PERB REMOVED IT. RE THE FITREP FOR 8MAY-20JUL98, I WAS INFORMED THAT THE PERB BELIEVED THAT PET SHOULD HAVE RECEIVED COMMAND SCREENING PRIOR TO BEING SENT TO DI SCHOOL, AND IF HE HAD, HIS COMMAND WOULD HAVE FOUND HIM TO BE INELIGIBLE BECAUSE OF THE PAGE 11. THE PERB DID NOT MAKE A FINDING RE PET'S MISCONDUCT.

Brian J. George

BRIAN J. GEORGE