



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 7907-98
4 June 1999

GYSC [REDACTED] FMCR
[REDACTED]
[REDACTED]
[REDACTED]

Dear Gunnery 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.

It is noted that the Commandant of the Marine Corps (CMC) has added your rebuttal statement to your contested adverse fitness report for 2 July to 28 September 1992, and removed references to your not having submitted a rebuttal.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 June 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 3 November 1998, a copy of which is attached. They also considered your letter dated 27 October 1998 with enclosure.

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 in finding that your fitness report at issue should stand. They found that your letter of substandard performance dated 23 February 1993 should not be removed, since they were unable to find that you should have been medically waived from the Physical Fitness Test. In view of the above, your application for relief beyond that effected by CMC 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

7907-98



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

IN REPLY REFER TO:
1610
MMER/PERB
3 Nov 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
GUNNERY SERGEANT [REDACTED], USMC

Ref: (a) GySgt [REDACTED] DD Form 149 of 14 Sep 98
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11B, the Performance Evaluation Review Board, with three members present, met on 29 October 1998 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 920702 to 920928 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the reason he failed the physical fitness test (PFT) administered when he reported to Marine Security Guard (MSG) School was due to the iron pills he was taking. He states that once he returned to his parent command, his problem was immediately corrected. The petitioner indicates that he was told that his transfer (TR) report from MSG School would not reflect any "deficiencies"; however, almost two years after the fact, information was added to his record documenting the PFT failure. The petitioner goes on to state that he had prepared a statement of rebuttal which was never added to his record. To support his appeal, the petitioner furnishes copies of correspondence between him and this Headquarters concerning the report, medical documentation, prior and subsequent fitness reports, and advocacy statements.

3. In its proceedings, the PERB concluded that:

a. When the petitioner departed MSG School, his fitness report should have contained information concerning the PFT failure. Although its incorporation into his official military record was untimely, that, in and of itself, constitutes neither an error nor an injustice. It is factual matter which is contained in official records. Whether the cause of his PFT failure was the consumption of iron pills is a moot point; likewise, weight waivers and medical tests after the fact have no relevancy on the issue at hand.

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b. It is the Board's conclusion that the Standard Addendum Pages documenting the petitioner's PFT failure should be kept as a matter of official record. However, they also find the existence of an injustice warranting limited corrective action and have directed the following:

(1) complete removal of the Standards Addendum Page signed and dated [REDACTED] on 12 Jul 95 (Frames F6, F7 and F8, PO1 Fiche).

(2) Insertion of the petitioner's four-page rebuttal statement adjacent to the fitness report under consideration.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Gunnery Sergeant [REDACTED] official military record. The corrections identified in subparagraphs 3b(1) and 3b(2) are considered sufficient.

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