



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

BJG
Docket No: 2633-99
20 May 1999

SSGT [REDACTED] USMC
[REDACTED]
[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.

It is noted that the Commandant of the Marine Corps (CMC) has modified your contested fitness report for 15 May 1997 to 4 January 1998 by correcting the beginning date from 15 May to 8 March 1997.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 May 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 16 April 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. They noted that your fitness report at issue is not an "extended" report, in that it does not reflect that your evaluation in a prior report remained valid. They found that you are correct that you should have received a "DC" (directed by the Commandant of the Marine Corps) report for 8 March to 7 May 1997. However, they did not consider this a material error warranting corrective action. In this regard, they found that a favorable report for 8 May 1997 to 4 January 1998 could not offset the harmful effect of your nonjudicial punishment, which must be documented in any event. Further, they noted that a "DC" report might well be viewed unfavorably by reviewers of your record. 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

2633-99



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

IN REPLY REFER TO:
1610
MMER/PERB
APR 16 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] DD Form 149 of 11 Feb 99
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 April 1999 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 970515 to 980104 (TD) was requested. Reference (b) is the performance evaluation directive governing submission of the report. NOTE: This Headquarters effected action to change the beginning date of the report to "970308"; documentation contained in the Official Military Personnel File (OMPF) and the Master Brief Sheet (MBS) reflects this modification.

2. The petitioner contends the report is procedurally and factually incorrect and cites those areas in reference (b) which he believes have been violated.

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 fitness report of record was the only report submitted to this Headquarters, and is therefore the "official" evaluation for the period covered. Any other prior version must be considered a "draft" and has no validity.

b. In the petitioner's rebuttal to the challenged report, he acknowledged the incident and took full responsibility for his actions. The Board views with great concern the petitioner's attempt in reference (a) to obviate the seriousness of the incident by challenging the tenets of the system utilized to record such situations.

c. Subsequent to the processing of the fitness report by this Headquarters, it was discovered by the reporting officials that the beginning date was in error. An administrative correction was effected and the report is correctly reflected as "970308 to 980104."

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d. That the petitioner received nonjudicial punishment (NJP) for Driving While Intoxicated (DWI), and that he acknowledged his responsibility, is not a matter for debate. Both the petitioner and the reporting officials were aware of the incident when the report was submitted. The inadvertent error in assigning the wrong beginning date is not an invalidating factor.

e. There is no substantiation that the Reporting Senior avoided submitting a "Directed by the Commandant (DC)" report upon the petitioner's conviction at NJP (i.e., a second alcohol-related incident). Since the first incident occurred almost eight years ago, there is no reason to believe the Reporting Senior was aware; he did not maintain the petitioner's Service Record Book (SRB) and would have had no reason to check it prior to completing the fitness report at issue.

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]'s official military record.

[REDACTED]

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