



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

BJG
Docket No: 2601-99
19 May 1999

MAJ [REDACTED] E USMCR
[REDACTED]
[REDACTED]

Dear Major [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 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 19 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. Accordingly, 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

2601-99

IN REPLY REFER TO:
1610
MMER/PERB
APR 19 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 MAJOR
[REDACTED] USMCR

Ref: (a) Major [REDACTED] DD Form 149 of 27 Jan 99
(b) MCO P1610.7C w/Ch 1-6

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 14 April 1999 to consider Major [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 940201 to 940415 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report is based on an incident for which no charges were levied; that the accusation was the result of a "marital conflict" and the circumstances were both "distorted and unsubstantiated." Additionally, the petitioner claims he was never properly counseled on the report.

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. Based on the commentary by the Reporting Senior that the petitioner "refused to sign" the report, coupled with the efforts by this Headquarters to obtain the petitioner's rebuttal (evidence a copy of a signed Receipt for Certified Mail attached to the report), it is clear the petitioner was given every opportunity to voice his side of the situation. Simply stated, he failed to do so and should accept responsibility for his own inaction.

b. The decision to refer a particular instance of misconduct to disciplinary proceedings rests within the discretion of the Commanding Officer. At the same time, misconduct that does not rise to the level of disciplinary action may still warrant comment in a fitness report. This is particularly so when it reflects on a Marine's performance of duty, potential, or professional character. In this case, disciplinary action was evidently deemed unnecessary and the performance evaluation system was properly used to officially record factual information relevant to and impacting on the petitioner's potential and

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] [REDACTED] USMCR

professional character. To this end, the PERB discerns absolutely no error or injustice.

c. We find no merit or substantiation to the petitioner's allegation that he was not properly counseled on the fitness report. In fact, specific counseling in connection with fitness report submission terminated with the effective date of reference (b) (16 December 1985).

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Major [REDACTED]'s official military record.

5. The case is forwarded for final action [REDACTED]

[REDACTED]

Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps