



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

SMC
Docket No: 02794-99
27 May 1999

SSC [REDACTED] USMC
[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 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 25 April 1999, a copy of which is attached, and your letter dated 17 May 1999.

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. From their review of the narrative of the contested fitness report, the Board found no unacceptable comment on inexperience. They were unable to find the reporting senior did not provide you performance counseling. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, the Board noted that the report at issue need not be consistent with reports for other periods. 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

2794-99

IN REPLY REFER TO:
1610
MMER/PERB
APR 25 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] Form 149 of 7 Mar 99
(b) MCO P1610.7C w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 21 April 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 900105 to 910228 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report is administratively in error, does not comply with the provisions of reference (b), and contains adverse/derogatory comments in the Section C narrative. To support his appeal, the petitioner furnishes his own detailed statement, copies of the report at issue and his Master Brief Sheet, a copy of a Letter of Commendation, and 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. Contrary to the petitioner's arguments and assertions, the report neither violates any of the provisions of reference (b), nor does it contain any marks/comments that are adverse. That the petitioner believes otherwise is simply his interpretation of reference (b) vice the actual tenets of that directive. Simply stated, the petitioner's objections equate to his opinion of his performance versus that of the Reporting Senior.

b. The Certificate of Commendation at enclosure (3) to reference (a), while complimentary, documents performance **subsequent** to the end of the reporting period at issue. Consequently, it is simply not germane to the situation. Additionally, the absence of documented counseling entries in the SRB (enclosure (4) to reference (a)) does not somehow prove the petitioner did not receive some type of performance counseling. In this regard, the Board emphasizes that official SRB counseling entries and

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performance counseling/feedback are two separate and distinct administrative actions. One is not dependent on the other.

c. Notwithstanding the petitioner's statement and his belief that the report is inaccurate, unjust, and inconsistent, there has been absolutely no documentary evidence whatsoever to substantiate his arguments. To the end, the Board concludes that the petitioner has failed to meet the burden of proof necessary to establish the existence of either an error or injustice.

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] official military record.

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