



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 03419-99

19 August 1999

SGT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear 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 19 August 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 24 May 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. 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

3419-99

IN REPLY REFER TO:
1610
MMER/PERB
MAY 24 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
SERGEANT [REDACTED] USMCR

Ref: (a) Sergeant [REDACTED] Form 149 of 8 Mar 99
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 19 May 1999 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960301 to 960901 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the conduct of nonjudicial punishment (NJP) was a grave injustice to his career and that the fitness report was utilized as a means to end his progression on active duty.

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. Notwithstanding the petitioner's rebuttal and current statement, there is absolutely no documentary evidence to suggest or prove that the NJP proceedings were inappropriate or unfairly awarded. Likewise, there is nothing to indicate that the report reflects anything other than an honest and accurate assessment of the petitioner's performance, or that the reporting officials harbored a "hidden agenda" to terminate the petitioner's active duty career. That punishment levied as a result of the NJP was suspended and subsequent performance evaluations were excellent/outstanding speak well of the petitioner's resolve. Those issues do not, however, negate the NJP, which is a matter of official record. To this end, the Board stresses that the NJP was correctly recorded via the performance evaluation system and represents neither an error nor an injustice.

b. To justify the deletion of a fitness report, evidence of probable error or injustice should be produced. Such is simply not the situation in this case.

(3) PERB

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