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

SMC  
Docket No: 00218-01  
14 June 2001

MSGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Master Serg [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 14 June 2001. 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 9 January 2001, a copy of which is attached, and your undated letter 1650 S-6.

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.

Concerning your allegation that you were not counseled on your performance before you received the contested fitness report, the Board found that the unfavorable aspects of the report were based on the results of two command investigations which, according to your own assertion, were not completed until September 1998. The Board noted that the sergeant's statement of 26 October 2000 on your behalf says that about October 1997 he made a statement concerning the matter then under investigation to the officer responsible for the inquiry. They were unable to find this statement was not duly considered. They found the prohibition against double jeopardy, which concerns criminal prosecutions, did not apply in your case, as the contested fitness report and the restriction on your reenlistment were both administrative actions. Finally, they were unable to find you were correct in asserting you were the only person with a role in the loss of equipment who was held to account.

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

216-11

IN REPLY REFER TO:  
1610  
MMER/PERB  
9 JAN 2001

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  
MASTER SERGEANT [REDACTED] USMC

Ref: (a) MSgt. [REDACTED] DD Form 149 of 31 Oct 00  
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 December 2000 to consider Master Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 971101 to 980930 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that several of the marks in Section B and comments in Section C are not reflective of his true performance. Additionally, he states he was never counseled or told that his performance was anything other than outstanding. To support his appeal, the petitioner furnishes a copy of the report at issue, a statement from Sergeant [REDACTED] and a document he indicates reflects disposition of a similar case.

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. In his rebuttal to the fitness report, the petitioner surfaced the same basic concerns he now raises in reference (a). We note that in his adjudication of the report, Lieutenant Colonel [REDACTED] specifically addressed the petitioner's objections to the low Section B marks, but concurred they were both justified and valid. Notwithstanding the statement from Sergeant [REDACTED] there is nothing to indicate that the report is anything less than a fair assessment of the petitioner's demonstrated performance during the period covered.

b. The undated/unsigned Addendum Page which the petitioner attached as enclosure (5) to reference (a) has absolutely no bearing on either his or any other specific case. This document was prepared by the undersigned and is used as nothing more than a training tool included with lecture handouts. The

(3) PERB

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petitioner's attempt to somehow link it to his own case completely lacks substance.

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