



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 1877-00

7 September 2000

CPT [REDACTED] USAR
[REDACTED]
[REDACTED]

Dear Captain [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 amended your contested fitness report for 4 March to 29 August 1996 to show that you received a letter of appreciation.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 August 2000. 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 10 March 2000, 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 found that the reporting senior's comments were sufficiently specific. They were unable to find that the reporting senior opposed your effort to prosecute a sergeant for drug abuse, or that he viewed joint operations negatively. 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



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

1877-00

IN REPLY REFER TO:
1610
MMER/PERB
10 MAR 2000

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
FORMER MARINE CAPTAIN [REDACTED]

Ref: (a) [REDACTED] DD Form 149 of 17 Nov 99
(b) MCO P1610.7D w/Ch 1
(c) MCO 1610.12 (U.S. Marine Corps Counseling Program)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 7 March 2000 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960304 to 960829 (RT) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report contains policy/procedural errors and/or substantive inaccuracy. It is his position that [REDACTED] (the Reporting Senior) failed to follow requirements for counseling and evaluation; that the report contains factual errors; that a Letter of Appreciation was not acknowledged; and there was a personality conflict between the petitioner and the Reporting Senior. To support his appeal, the petitioner furnishes his own detailed statement, excerpts from references (b) and (c), a copy of the fitness report at issue, and a copy of the Letter of Appreciation.

3. In its proceeding, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The Board agrees with the petitioner that he should have been cited for receiving a Letter of Appreciation. They do not, however, find this oversight to invalidate an otherwise acceptable fitness report. To rectify this omission, the Board has directed the preparation and insertion of an appropriately worded Memorandum for the Record onto the performance ("P") section of the petitioner's official military personnel file identifying the following:

(1) That Item 17a of the fitness report should reflect a mark of "yes."

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
FORMER MARINE [REDACTED]

(2) That Section C should contain a comment indicating that the petitioner was the recipient of a Letter of Appreciation from the CO, EWTGPAC recognizing his expertise and professionalism in the operation of the MAGTF Tactical Warfare Simulation System (MTWS) and its interface with the Joint Military Command Information System (JMCIS).

b. In his rebuttal to the adverse fitness report, the petitioner exercised his rightful prerogative in appending a statement of rebuttal wherein he surfaced his disagreements. The Reviewing Officer sufficiently adjudicated his concerns; however, he did so in favor of the Reporting Senior. The Board finds nothing in reference (a) to cast doubt as to either the accuracy or fairness of the overall evaluation.

c. The petitioner's disclaimer to proper counseling has not been documented or otherwise proven. In this regard, the Board emphasizes its position that performance counseling, or a lack thereof, does not constitute grounds for removing a fitness report. Reference (b) governs a totally separate program from the Counseling Order (reference (c)). The two programs should be applied simultaneously; however, they are totally exclusive of each other. Performance counseling may be conducted in various forums employing a variety of techniques which may or may not be documented or recognized as such by the recipient.

d. As with the issue of a disclaimer to counseling, the Board finds nothing to substantiate the petitioner's allegation of a personality conflict. Even if such a conflict did exist, it is not, in and of itself, grounds for relief. It is the duty and responsibility of the junior to accommodate the requirements of the senior unless and until the senior's actions exceed the bounds of professional conduct. There is no such showing here.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of [REDACTED] official military record. The limited corrective action identified in subparagraph 3a is considered sufficient to rectify the error.

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~~FOR [REDACTED]~~

5. The case is forwarded for final action.

[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