



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 02641-00

17 August 2000

SC [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Serge [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. You requested removal of a fitness report for 19 May 1997 to 31 March 1998 and the service record book page 11 ("Administrative Remarks") counseling entries dated 12 January 1996 and 26 March 1998.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested fitness report by changing the entry in item 17b (whether Marine was the subject of any adverse report from outside the reporting chain) from "Yes" to "No."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 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 (HQMC) Performance Evaluation Review Board (PERB), dated 6 April 2000, and the advisory opinion furnished by HQMC dated 5 May 2000, copies of which are attached, and your letter dated 14 June 2000 with enclosures.

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 warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB and the advisory opinion.

Specifically regarding the contested fitness report, the Board did not find it internally inconsistent. They were unable to find the reporting senior and the reviewing officer were incorrect in stating you had been counseled. In any event, the Board generally does 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. Your erroneous Social Security number on the Standard Addendum Page reflecting continuation of the reviewing officer's comments is not a material error warranting corrective action by this Board, although you may address the matter to HQMC (MMSB) if you want this error corrected.

Specifically concerning the contested service record page 11 entry dated 12 January 1996, the Board was unable to find your division staff noncommissioned officer in charge (SNCOIC) had authorized you to change the endorsement in question, notwithstanding the staff sergeant's statement of 22 December 1995 that on your return from the SNCOIC's office, you said he had told you to change it. They were not persuaded that the entry was an extreme response to the matter it addressed. Respecting the entry dated 26 March 1998, your unsupported rebuttal of 2 April 1998 did not convince them that you had not made unauthorized personal use of a government vehicle.

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.

As a matter of information, your rebuttals of 12 January 1996 and 2 April 1998 to the contested page 11 entries do appear in your Official Military Personnel File.

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

IN REPLY REFER TO:
1610
MMER/PERB
6 APR 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
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] D Form 149 of 17 Dec 99
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 4 April 2000 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970519 to 980331 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the markings in Section B of the report have not been justified; nor had he been provided any counseling that would have made him aware of discrepancies in his performance. The petitioner also believes there are "unjustifiable" comments in Section C which makes the report biased. To support his appeal, the petitioner furnishes his own statement, copies of Page 11 extracts from his Service Record Book (SRB), a copy of the challenged fitness report, and third party statements.

3. In its proceedings, 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 finds that Item 17b (adverse) has been incorrectly marked "yes." Since there is nothing in the Section C narrative indicating that the command had received adverse reports from outside the reporting chain, the Board can only surmise that the Reporting Senior mistakenly believed that the adverse nature of the report warranted a mark of "yes" in Item 17b. The Board does not, however, find this minor oversight to invalidate an otherwise correctly submitted fitness report. In this regard, the Board has directed that Item 17b be changed to reflect a mark of "no" and that the petitioner's Master Brief Sheet be modified accordingly.

(4) AO-5

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] JR. [REDACTED] USMC

b. In his statement appended to reference (a), the petitioner has done little more than added an additional statement to this already properly adjudicated/resolved fitness report. Simply stated, he has not presented anything of a documentary or substantive nature that refutes either the accuracy of the Reporting Senior's overall evaluation or the Reviewing Officer's comments.

c. The Board cannot understand why the petitioner included the statements from Staff Sergeants [REDACTED] and Sears with reference (a). Both statements concern an incident some 18 months prior to the reporting period at issue and have no apparent connection to the officials involved in the situation now under consideration. What these two statements do provide, however, is that the petitioner apparently has a systemic problem with integrity.

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 Sergeant [REDACTED]' official military record. The limited corrective action identified in subparagraph 3a is considered sufficient to correct the error.

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



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

IN REPLY REFER TO:
1070
MI
5 MAY 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

1. We reviewed Sergeant [REDACTED] application and supporting documents concerning his request for removal of the Administrative Remarks page 11 entries dated 960112 and 980326.
2. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation.
3. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make Service Record Book entries on page 11 for recording information that is not, or cannot be, documented anywhere else in the Service Record Book or the Marine's automated record.
4. The following comments concerning the page 11 entry dated 960112 are provided:
 - a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found, and states that Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, he was afforded an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the service records. Sergeant [REDACTED] acknowledged the counseling entry by his signature and further chose "to" make a statement in rebuttal. It is noted that a copy of the rebuttal statement was not included in his application.
 - b. Sergeant [REDACTED] deficiency in the page 11 entry focuses on one of the responsibilities he had while assigned as an administrative clerk for Headquarters Company. He was responsible for ensuring that endorsements (an official document) being processed through his office were in proper format, however, Sergeant [REDACTED] was found to have exceeded this.

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[REDACTED] USMC

c. Sergeant [REDACTED] believes that his record is in error or unjust by claiming that the "Page 11 entry blaming myself for the action of my Division Staff Noncommissioned (SNCOIC)." Sergeant [REDACTED] documented evidence provided in his application, statement from Staff Sergeant [REDACTED] indicates that he exceeded his area of responsibility and authority by a) reviewing all of the unit's endorsements, b) singling out one endorsement and c) expressing his opinion to Staff Sergeant [REDACTED] that "the endorsement would have to be changed because no other endorsements for any other member of the Command were written in that fashion.", a decision only the department head can make. Sergeant [REDACTED] also assumed the responsibility of notifying Staff Sergeant [REDACTED] the contents of the endorsement, which she did not have 'a need to be informed' by him.

d. Sergeant [REDACTED] documented evidence provided in his application, statement from Staff Sergeant [REDACTED] corroborates with Staff Sergeant [REDACTED] statement indicating that he exceeded his area of responsibility and authority by expressing his opinion to Staff Sergeant [REDACTED] concerning an endorsement on Staff Sergeant [REDACTED]. Communicating an opinion "He did not feel that it was in line with the Command's position on the endorsements..." and allowing Staff Sergeant [REDACTED] to read sensitive information on personnel not under his direct supervision is cause to be concerned. Staff Sergeant [REDACTED] did not have a 'need to know' and any concerns of Sergeant [REDACTED] should have been directed to the author of the endorsement, his department head or immediate supervisor.

e. Sergeant [REDACTED] documented evidenced provided in his application, statements from Staff Sergeant [REDACTED] at [REDACTED] suggests that the command initiated a preliminary inquiry into an incident that involve all three parties. The incident has the appearance of a possible violation of a punitive article under the Uniformed Code of Military Justice.

f. Sergeant [REDACTED] does not provide documented evidence to support his claim that the page 11 entry "was an extreme, an effort to tarnish my official military record."

g. Sergeant [REDACTED] commander determined that the information contained in the page 11 entry was an extraordinary incident that had occurred during the course of official duties where the circumstances suggest a significant departure from the expected level of professionalism and judgment.

h. The page 11 entry suggests that Sergeant [REDACTED] commander followed the guidelines per JAGINST 5800.7, paragraph 0204h by reporting the conclusion of the inquiry to the next superior officer in the chain-of-command, the Commanding General.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

i. The Commanding General determined that the information contained in the page 11 entry was of permanent value to Sergeant [REDACTED] career, thereby documenting this event per the provisions of the IRAM.

5. The following comments concerning the page 11 entry dated 980326 are provided:

a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found, and states that Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, he was afforded an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the service records. Sergeant [REDACTED] acknowledged the counseling entry by his signature and further chose "to" make a statement in rebuttal. Again, it is noted that a copy of the rebuttal statement was not included in his application.

b. Sergeant [REDACTED] does not provide documented evidence to support his claim that the page 11 entry is in error or unjust. Additionally, he does not provide comments, explain or rebut particulars. The third officer action on the fitness report standard addendum page dated 6 May 1998 from Colonel [REDACTED] III, located on his OMPF, substantiates those deficiencies from a third party view.

c. Sergeant [REDACTED] commander determined that the information contained in the page 11 entry was of permanent value to his career, thereby documenting this event per the provisions of the IRAM.

6. In view of the above, it is recommended that Sergeant [REDACTED]' request for removal of the Administrative Remarks page 11 counseling entries dated 960112 and 980326 be disapproved.

7. Point of contact is [REDACTED] at [REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
Director, Manpower Management
Information System Division