



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

SMC
Docket No: 02724-01
28 June 2001

SGT [REDACTED] USMC
[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 28 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 29 March 2001, 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. The statement of 11 December 2000 from the legal services chief did not persuade the Board that you rated higher marks in "courage" and "professional military education," or in any other area of the contested fitness report. They were unable to find you were not counseled about your performance. In this regard, 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. 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

IN REPLY REFER TO:

1610
 MMER/PERB
 29 MAR 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
 SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 17 Jan 01
 (b) MCO P1610.7E w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 28 March 2001 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990401 to 000131 (TD) was requested. In the alternative, he asks that the "B" markings in Items E1 (courage) and G1 (professional military education) be removed. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that he was never counseled as prescribed by reference (b), and therefore, unable to correct any deficiencies. It is his position that he was never informed of these matters until his performance had fallen below the Reporting Senior's expectations. To support his appeal, the petitioner furnishes a letter from Master Gunnery Sergeant [REDACTED] a copy of the challenged fitness report, and his own statement (with attachments).

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. At the outset, the Board stresses that there are no purported deficiencies identified in the fitness report at issue. It is not "adverse" and appears to have been completed in full compliance with the provisions of reference (b).

b. Absent anything to the contrary, and notwithstanding Master Gunnery Sergeant [REDACTED] advocacy statement, the reduced or lowered markings in Items E1 and G1 appear to be accurate and appropriate. The fact that markings may have changed from one reporting period to another does not invalidate a given report.

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

Rather, it simply reflects the amount of effort exerted and accomplishments attained during that finite period.

c. Succinctly stated, the petitioner has failed to meet the burden of proof necessary to demonstrate the existence of either an error or an injustice.

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