



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

dw

SMC
Docket No: 04534-01
17 August 2001

SSGT [REDACTED] MC

Dear Staff S [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 the fitness reports for 1 July to 19 August 1999 and 20 August to 13 December 1999.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested report for 1 July to 19 August 1999 by deleting from the third sighting officer's comments the references to nonjudicial punishment.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 August 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 1 June 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 warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. 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

4534-01

IN REPLY REFER TO:
1610
MMER/PERB
1 JUN 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 STAFF
SERGEANT [REDACTED] USMC.

Ref: (a) SSgt [REDACTED] DD Forms 149 (2) of 22 Feb 01
(b) MCO P1610.7E
(c) MCO P1610.7E w/Ch 1

Encl: (1) Corrected Addendum Page b [REDACTED] of
14 Nov 99

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 23 May 2001 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 990701 to 990819 (DC) - Reference (b) applies
- b. Report B - 990820 to 991213 (DC) - Reference (c) applies

2. The petitioner states the reports are in error in mentioning the number of alcohol-related incidents. To support his appeal, the petitioner furnishes his own statement, copies of California State/County documents, a letter from the Director, Consolidated Substance Abuse Counseling Center at Camp Pendleton, and a Certificate of Completion of Impact Training.

3. In its proceedings, the PERB concluded that, with a minor exception, the reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Clearly, the adversity of both reports lies in the alcohol-related incidents. In each case the petitioner acknowledged and responded to the reports.

b. In the case of Report A, the ^{ADVERSE SIGHTING} Reviewing Officer (Lieutenant Colonel [REDACTED]) thoroughly adjudicated the report and satisfactorily addressed the factual discrepancies. Of

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significance is Lieutenant Colonel [REDACTED] clarification that this was, in fact, the petitioner's second alcohol-related incident in a three year period. The petitioner's argument in this regard is, therefore, dismissed as being without substance or merit.

c. Concerning the comments made by Lieutenant Colonel [REDACTED] in his review of Report A, the Board finds that the references to possible NJP are inappropriate and prejudicial. Likewise, they are in contravention of the guidance contained in reference (b). The Board does not, however, believe this invalidates the entire report. Instead, we have eliminated all references to the dismissed NJP. A copy of the modified report is contained at the enclosure.

d. As with Report A, Report B is a legitimate appraisal of performance and one with which the petitioner concurred. We invite attention to his own rebuttal statement. Simply stated, the facts have been accurately and fairly recorded.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Staff Sergeant [REDACTED] official military record. The limited corrective action to Report A is considered sufficient.

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