



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

SMC  
Docket No: 04559-01  
8 November 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 8 November 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 31 May 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 Board found no violation of the "double jeopardy" clause of the Constitution, as the contested fitness report is administrative, rather than punitive; and its use by the promotion boards in deciding not to select you does not constitute punishment. The Board did not consider removing the nonjudicial punishment (NJP) documented in the report at issue, as you did not request this. They did recognize that the fitness report could be removed without removing the NJP, on the basis of a finding that the NJP was erroneous or unjust. However, the Board could make no such finding, noting you do not contend the NJP was unwarranted. 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

4559-01

IN REPLY REFER TO:  
1610  
MMER/PERB  
31 MAY 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 6 Mar 01  
(b) MCO P1610.7D w/Ch 1

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 23 May 2001 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 960124 to 961206 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues the report is a recurring blemish on his career that is hampering his progression and professional growth. He also believes the report constitutes "double jeopardy" and states that it has been "administratively consuming" him and his family for the past five years. To support his appeal, the petitioner has furnished several advocacy statements and copies of various documents from his military records.

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. Notwithstanding all of the complimentary statements included with reference (a) - including that of the Reporting Senior - the Board finds absolutely nothing in error or unjust relative to the fitness report. While the Reporting Senior's observations of the petitioner are quite favorable, the Board notes that he has not recommended or requested removal of the challenged fitness report. Even if he had, the Board is hasty to point out that the imposition of non-judicial punishment (NJP) occurred and was correctly recorded via the performance evaluation system. Unless and until that action is set aside or otherwise eliminated, removal of the report is simply not warranted.

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

b. With regard to the petitioner's argument that the report continues to tarnish his career, we must state our position that the Board cannot and does not operate under the premise that an administratively correct and factually accurate fitness report should be removed simply to enhance competitiveness. To do so would breach the integrity and viability of the entire performance evaluation system.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]

D  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps