



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 4682-00

11 August 2000

MAJ [REDACTED] USMC

Dear Major [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 10 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 5 July 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.

Specifically regarding the contested fitness report for 12 April to 17 May 1996, they were unable to find a material error in the reporting senior's statement that you and your officers had been drinking for the six hours before arriving at the enlisted club, despite your assertions that you and your officers had not been drinking "continuously" before arriving there, and that you did not drink for several hours before arriving. They likewise were unable to find that alcohol played no part in the conduct of you or your officers, nor could they accept your assertion that they were "'well behaved.'"

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

4482-00

IN REPLY REFER TO:
1610
MMER/PERB
5 JUL 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 MAJOR
[REDACTED] USMC

Ref: (a) Major [REDACTED] s DD Form 149 of 16 Apr 00
(b) MCO P1610.7D

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 June 2000 to consider Major [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 951101 to 960111 (TD)
- b. Report B - 960412 to 960517 (TR)

Reference (b) is the performance evaluation directive governing the submission of both reports.

2. The petitioner contends that the challenged fitness reports are inaccurate, unjust, and not per established performance evaluation policy. Concerning Report A, the petitioner argues that the report was inappropriately utilized as a counseling tool, and unjust in that no such counseling ever took place between he and the Reporting Senior. He also points out that he received Report A some four months after the end of the reporting period and on the same date as he received Report B. Finally, the petitioner directs the Board's attention to the immediately preceding reporting period where he had been evaluated as "outstanding" by the same Reporting and Reviewing Officers. It is his belief that the incident which occurred on 4-5 April 1996 tainted the evaluation contained in Report A. With regard to Report B, the petitioner believes the report is inaccurate and a catalyst of the marks received in Report A. The petitioner points out those areas where he believes reference (b) has been violated, and again disclaims any type of counseling.

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

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF MAJOR
[REDACTED] USMC

a. Other than the petitioner's own statement, there is no substantiation to show anything biased or inaccurate with the exemplary portrayal of performance found in Report A. While neither this Headquarters nor the PERB condone the late submission of fitness reports, that fact alone does not invalidate an otherwise acceptable fitness report. Given operational activities and requirements, the late submission is not viewed as inordinate.

b. The Board finds no merit in the petitioner's claim that prior to the receipt of Report A he was not aware of the Reporting Senior's concern in his handling of those Marines under his charge. At the top of page nine of his rebuttal to Report B, the petitioner acknowledged that when he received his annual report ending 951031, Lieutenant Colonel [REDACTED] addressed his concern over the morale of the petitioner's company. Again on page ten of the rebuttal he acknowledges that Colonel [REDACTED] (the Reviewing Officer) addressed that very subject again, with the petitioner and his company officers, when they were in Panama in January 1996.

c. The adversity of Report B has been clearly stated by both the Reporting and Reviewing Officers. The petitioner's contention that there was no "investigation" conducted regarding the liberty incident -- only an "inquiry" -- is semantics. An inquiry is a form of investigation. A JAG Manual or Article 32 investigation is for more formal and specific reasons. The facts and truth surrounding an incident can still be attained with a simple inquiry.

d. While no one may have been charged or prosecuted under the UCMJ, an incident reflecting poor judgment and leadership is more a matter of character/performance than a criminal offense. As such, it is proper for recording via the performance evaluation system.

e. The statements by former Lieutenant [REDACTED] and Captain [REDACTED] enclosures (6) and (7) to reference (a)) do not shed any additional light on the matter than that documented in Report B. Likewise, neither statement contradicts the facts/conclusions as recorded by Lieutenant Colonel [REDACTED] and Colonel [REDACTED]. Succinctly stated, the presence of the petitioner and his officers at the Tropical Breeze Club was not the issue; it was the incident with the Military Police.

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[REDACTED], USMC

f. Notwithstanding all of the arguments in reference (a), the petitioner, on page three of his rebuttal, stated: "I was present...and I accept all responsibility for the actions of my Marines."

4. The Board's opinion, based on deliberation and secret ballot vote, is that Reports A and B should remain a part of Major [REDACTED] official military record.

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