



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

BJG
Docket No: 4688-00
11 August 2000

MA [REDACTED] USMC
[REDACTED]
[REDACTED]

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.

You requested that your fitness report for 24 July 1997 to 9 July 1998 be modified by raising to "OS" (outstanding) the marks of "EX" (excellent) in "force" and "EX" - "OS" in "general value to the service," or that the report be removed. It is noted that the Commandant of the Marine Corps (CMC) has directed removal of the following sentence from the reporting senior's comments: "Makes up for lack of force and aggressiveness with dogged determination." CMC further directed that the report be amended to reflect that you received the Navy and Marine Corps Commendation Medal.

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 29 June 2000, a copy of which is attached. They also considered your rebuttal letter dated 26 July 2000.

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 was unable to find that the reporting senior did not counsel you about perceived deficiencies in "handling officers" and "economy of management." 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. They found that removing the sentence relating to "force" did not require raising the marks in "force" and "general value to the service," or completely removing the report. They found that this sentence was inconsistent with the favorable marks in these areas, not, as you contend, that the sentence was the reporting senior's justification for lower than "OS" marks.

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

4688-00



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

IN REPLY REFER TO:
1610
MMER/PERB
29 JUN 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] SMC

Ref: (a) Major [REDACTED] D Form 149 of 5 May 00
(b) MCO P1610.7D w/Ch 1-5

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 fitness report for the period 970724 to 980709 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends there is a statement in Section C of the report which may be viewed as inaccurate, unjust, or adverse. He also takes exception with the three marks of "excellent" in Section B, especially since none of those marks had been commented on or otherwise justified in Section C. Finally, the petitioner states that since he received a personal award during the reporting period, Item 17a (commendatory) should have been marked "yes" and an amplifying statement included in Section C.

3. In its proceedings, the PERB concluded that, with two minor exceptions, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The one sentence in Section C with which the petitioner has a legitimate issue is: "Makes up for lack of force and aggressiveness with dogged determination." Given the overall positive tenor of the evaluation, the challenged comments seem confusing in attempting to explain a differing approach to challenges and leadership style. The Board does not, however, find that removing the entire report is necessary. Instead, the Board has directed elimination of the offending sentence.

b. The petitioner is correct that Item 17a should have been marked "yes." Once again, that omission does not serve to invalidate the entire report. We have directed the appropriate correction to both the fitness report and the petitioner's Master Brief Sheet.

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c. The three "excellent" ratings in Items 13d (handling officers), 14i (force), and 14m (economy of management) of Section B do not somehow equate to deficiencies. Consequently, and per the provisions of reference (b), no specific comment/justification was necessary. In fact, marks of "below average" and "unsatisfactory" are the only ones which require specific justification. That the petitioner believes he should have received higher marks in those areas is not viewed as either inconsistent or adverse, but merely his opinion of his degree of success in mission accomplishment as opposed to that of the Reporting Senior and Reviewing Officer. To this end, the Board discerns neither an error nor an injustice.

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 [REDACTED] official military record. The corrective actions identified in subparagraphs 3a and 3b are considered sufficient.

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