



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

BJG  
Docket No: 4811-00  
11 August 2000

[REDACTED] EMCR  
[REDACTED]  
[REDACTED]

Dear [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 10 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. Since your letter of appreciation at enclosure (6) to your application was undated, they were unable to find that it should have been mentioned in your contested fitness report for 1 December 1990 to 31 December 1991. 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  
10 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 STAFF  
SERGEANT [REDACTED]

Ref: (a) [REDACTED] DD Form 149 of 15 Mar 00  
(b) MCO P1610.7C w/C 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 July 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 901201 to 911231 (AN)
- b. Report B - 920307 to 920630 (CH)

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

2. The petitioner argues that his failure of the physical fitness tests (PFTs) recorded in both reports was caused by a medical disability vice a lack of initiative/poor preparation. To support his appeal, the petitioner provides a letter from Lieutenant [REDACTED], USNR.

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:

a. At the outset, the Board emphasizes that when the petitioner acknowledged the adverse nature of the reports (evidence his signature in Items 24), he opted to omit any statement in his own behalf. In so doing, he passively concurred in the accuracy of both reports and indicated he had no matters to present in extenuation and mitigation. Certainly, since the petitioner had a CT scan and an MRI in July 1988, and was aware of the "slipped" disk, he could have surfaced that matter in a statement of rebuttal. For whatever reason he chose to not avail himself of that right, it is he who must now accept ultimate responsibility for that decision.

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SERGEANT [REDACTED] USMC

b. Notwithstanding Lieutenant [REDACTED] letter (some eight to nine years after the fact), there is nothing definitive to show that the petitioner's failure of the PFTs was a direct result of a medical condition that evidently existed since before July 1988. In fact, the Board notes that the petitioner passed all of his PFTs both prior and subsequent to the periods covered by the challenged fitness reports (all while he had the same medical condition).

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.

5. The case is forwarded for final action.

[REDACTED]

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