



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

SMC
Docket No: 05305-01
3 August 2001

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff 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 2 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 2 July 2001, and the memorandum for the record dated 2 August 2001, copies of which are attached. They also considered your letter dated 20 July 2001.

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 in finding that the contested fitness reports should stand. They found that although Marine Corps Order P1610.7E was in effect when the contested fitness report for 22 to 23 April 1999 was submitted, the particular provisions you cited from that directive, paragraphs 6004.5.a and 6004.5.b, were inapplicable, as they concerned a course of instruction of 30 days or less, while the memorandum for the record shows the course of instruction to which the contested fitness report related was for over 30 days. Further, paragraph 6004.5.a indicates that when the course of instruction is for 30 days or less, "No fitness report is required [emphasis added]" from the school; it does not prohibit submitting a fitness report. Since the Board found no defect in your performance record, they had no grounds to remove your status as having failed of selection for promotion to gunnery sergeant. 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
2 JUL 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) SSg [REDACTED] DD Form 149 of 5 Apr 01
(b) MCO P1610.7D w/Ch 1-5
(c) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 June 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 980810 to 980821 (TD) - Reference (b) applies
- b. Report B - 990422 to 990423 (FD) - Reference (c) applies

2. The petitioner contends the reports are in error and unjust in that they do not comply with the provisions of subparagraphs 6004.5a and 6004.5b of reference (b). He also points out that since receiving both reports he has successfully completed the Career Course.

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. Contrary to the petitioner's arguments, both reports were not governed by reference (b). See subparagraphs 1a and 1b above. Nevertheless, the principles concerning fitness reports documenting disenrollment from a formal course of instruction are basically the same in both directives. Succinctly stated, both directives require comment as to why an individual was disenrolled/dropped. The reports at issue contain such verbiage and there is no evidence of error or injustice.

b. While the petitioner is to be commended for his perseverance in successfully completing the Career Course, the fact remains that he was disenrolled on two previous occasions.

(3) PERB

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SERGEANT [REDACTED] USMC

In this regard, the PERB emphasizes that it cannot and does not operate under the premise that administratively correct and factually accurate fitness reports should be removed 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 reports should remain a part of Staff Sergeant [REDACTED] official military record.

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

2 August 2001

MEMO FOR RECORD

Subj: Case of SSgt [REDACTED] USMC, docke [REDACTED]

Today I contacted the SNCO Academy at Camp Lejeune [REDACTED] and was advised that the career course runs for 6 weeks, with the same duration in 1998.

[REDACTED]

Head, Performance Section