



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

BJG  
Docket No: 7843-00  
30 August 2001

1STSGT [REDACTED] MCR RET  
[REDACTED]  
[REDACTED]

Dear First 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 29 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 (HQMC) Performance Evaluation Review Board (PERB), dated 14 November 2000, the advisory opinion from the HQMC Career Management Team (CMT), dated 25 May 2001, and the memorandum for the record dated 26 July 2001, copies of which are attached. They also considered your letters dated 17 February and 21 May 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.

The Board found that the reporting senior adequately justified the adverse marks assigned in the contested fitness report. They noted that you did have a chance to rebut the comments of the reviewing officer/battalion commander, and that your rebuttal of 4 November 1999 to the reviewing officer's comments predated the 16 December 1999 comments of the third sighting officer/regimental commander. They were unable to find that the third sighting officer had a "preconceived" position which did not take due account of your rebuttal. They found that he added no new adverse information requiring further referral to you. Finally, they were unable to find that you did not receive a fair request mast hearing, notwithstanding the participation of a major who had previously attempted to have you relieved.

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

Enclosures



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

IN REPLY REFER TO:  
1610  
MMER/PERB  
14 NOV 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 FIRST  
SERGEANT [REDACTED] USMCR

Ref: (a) 1stSgt. [REDACTED] DD Form 149 of 28 Mar 00  
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 13 November 2000 to consider First Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990701 to 990731 (CS) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is both inaccurate and in violation of reference (b). Specifically, he alleges the report records events that occurred after the end of the reporting period; that the reviewing chain was broken; and that the report was submitted late. To support his appeal, the petitioner furnishes his own statement and a copy of the challenged report.

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. Although the petitioner has offered a lengthy rebuttal to this adverse report, the Board notes that in his statement appended to reference (a) (which closely mirrors his official rebuttal), he does not dispute what the Reporting Senior noted, nor the comments made by the Reviewing Officer. All areas that appeared to be in conflict with the Reporting Senior have been thoroughly adjudicated by the Reviewing Officer. The issues of accountability and judgment were wholly supported in the Reporting Senior's justification, and further clarified by the Reviewing Officer.

b. The petitioner's attempt to discredit both reporting officials is not only inappropriate, but dims his credibility in seeking to reroute blame. The Board observes that specific challenges in the petitioner's rebuttal are more appropriately handled at Request Mast proceedings, or through an Article 138, UCMJ, Complaint of Wrongs.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
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c. The petitioner's comments regarding the lateness of submission does not invalidate the report. Timing is important; however, correct/accurate submission is of greater concern. The petitioner fails to document precisely how or why the untimely submission contributed to either an injustice or inaccurate reporting. Succinctly stated, the unit took the necessary precautions to ensure that proper procedures were followed.

d. Neither the petitioner's claim that the reviewing chain was broken nor that events outside the reporting period were included have been documented or elaborated upon. Unless proven to the contrary, it would stand to reason that when the Company Commander is the Reporting Senior, then the Battalion Commander is the Reviewing Officer and the Regimental Commander is the Adverse Sighting Officer.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First 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

7843-00



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

IN REPLY REFER TO:

1070  
CMT  
25 May 01

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FIRST SERGEANT  
[REDACTED] USMCR

Ref: (a) CMC ltr 1610 MMER/PERB of 14 Nov 00

Encl: (1) 1stSgt [REDACTED] D Form 149 of 18 Feb 01

1. The enclosure has been reviewed by this office. We concur with the advisory opinion provided in the reference. Specifically, paragraph 3 citing the administrative and procedural correctness of the report.

2. The point of contact concerning this matter is Master Gunnery Sergeant [REDACTED] commercial [REDACTED]  
[REDACTED]

[REDACTED]

By direction

26 JULY 2001

MEMO FOR THE RECORD

PHONED OJAG, ADMIN LAW BRANCH, CODE 13 AND SPOKE W/M [REDACTED]  
[REDACTED] SHE STATES THAT OJAG HAS NO RECORD OF ARTICLE  
138 CORRESPONDENCE SUBMITTED BY 1STS [REDACTED]

[REDACTED]