



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

BJG
Docket No: 8254-01
5 December 2001

CW03 [REDACTED] USMC
[REDACTED]
[REDACTED]
[REDACTED]

Dear Chief Warrant [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.

It is noted that the Commandant of the Marine Corps (CMC) has modified the contested fitness report for 1 September 1999 to 30 April 2000 by adding the revised reviewing officer comments dated 9 October 2001, and amending the original comments in section K.4 by deleting the nonconcurrence with the mark assigned in item H.1 (evaluation of your responsibility as a reporting official).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 December 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 5 November 2001, 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 warranting . In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, 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



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

IN REPLY REFER TO:
1610
MMER/PERB
5 NOV 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNE APPLICATION IN THE CASE OF CWO3
[REDACTED] USMC

Ref: (a) CWO3 [REDACTED] DD Form 149 of 21 Jun 01
(b) MCO P1610.7E w/Ch 1-2

Encl: (1) Completed Fitness Report 990901 to 000430 (AN)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 5 September 2001 to consider CWO3 [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 990901 to 000430 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner believes the Reviewing Officer, with whom he had little contact, made a derogatory statement that he should have been allowed to rebut. He alleges Lieutenant Colonel [REDACTED] statement was the result of his (the petitioner's) refusal to write an adverse fitness report on one of his Marines. To support his appeal, the petitioner furnishes his own statement, a copy of the report, and a statement from the Reporting Senior of record [REDACTED].

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

a. Notwithstanding the statements made by the petitioner and [REDACTED], there is no substantive proof that Lieutenant Colonel [REDACTED] comments were based on anything other than his objective opinion of actual performance. That the petitioner and the Reporting Senior believe otherwise is viewed as unsanctioned speculation. Simply stated, only Lieutenant Colonel [REDACTED] flows the impetus for his comments.

b. While Lieutenant Colonel [REDACTED] comments may not be flattering, neither do they contain "adverse" matter which would

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF CW03
[REDACTED] USMC

have mandated the petitioner's acknowledgement and opportunity to respond.

c. Per subparagraph 4014.2 of reference (b), a Reviewing Officer is required to include the specific reason for nonconcurrence. In this case, the Board believes that was not accomplished. Owing to the recent age of the report, the Board found that returning the report to Lieutenant Colonel [REDACTED] would be a sufficient recourse. That action has been completed and Lieutenant Colonel [REDACTED] additional commentary has been included on an Addendum Page. We note that Lieutenant Colonel [REDACTED] propose to modify his original statement and limit his nonconcurrence to the mark in Item [REDACTED] only.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as reflected in the enclosure, should remain a part of [REDACTED]'s 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