



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

BJG
Docket No: 8282-01
12 December 2001

SSGT [REDACTED] SMC
[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 12 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 13 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.

The Board did not consider removing the nonjudicial punishment (NJP) cited in the contested fitness report, as you did not request this. They did recognize that even if the NJP remained in your record, the contested report could be removed on the basis of an error or injustice in the NJP. However, they could make no such finding. In this regard, while you provided polygraph examination results indicating you truthfully denied having ordered a subordinate to impersonate a recruit applicant's father, the NJP was not for that offense; rather, it was for impeding an investigation by discarding a witness statement, and for telling a staff sergeant to go to the Virginia Beach Juvenile and Domestic Relations District Court and assist a recruit applicant in his court hearing. The Board also noted that you did not appeal the NJP.

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

5282-01

IN REPLY REFER TO:
1610
MMER/PERB
13 NOV 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) SSgt [REDACTED] DD Form 149 (Docket #MC-301-01)
(b) MCO P1610.7D w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 November 2001 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980101 to 981006 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the nonjudicial punishment (NJP) documented in the fitness report was an injustice. It is his position that he was found guilty based on the untrue comments made by one of his subordinate Marines. To support his appeal, the petitioner furnishes statements from [REDACTED] [REDACTED] and [REDACTED], and the results of a polygraph examination.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. Regardless of the documentation included with reference (a), the incontrovertible fact is that the petitioner was the subject of NJP during the reporting period and that matter has been correctly recorded via the performance evaluation system. Unless and until the NJP is expunged from the record, removal of the report is simply not warranted.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

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SERGEANT [REDACTED] MC

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