



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

BJG
Docket No: 8381-00
6 September 2001

SGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear 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 6 September 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) in your case, dated 11 December 2000, and the advisory opinions from HQMC, dated 17 and 24 January 2001, copies of which are attached. They also considered your rebuttal letter dated 2 January 2001, and your two rebuttal letters dated 28 August 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 and the advisory opinions. They were unable to find that you were not adequately apprised of the requirements for absentee reporting. Further, they found nothing objectionable in your having received both a service record page 11 entry and an adverse fitness report which, to some extent, documented the same deficiencies. Finally, they did not find the page 11 entry and the fitness report to contradict each other. 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
11 DEC 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
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] DD Form 149 of 2 Oct 00
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 December 2000 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 981001 to 990331 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that since he received a Page 11 entry in his Service Record Book for his failures to report to class (which he believes is erroneous), the report represents "extra punishment." To support his appeal, the petitioner furnishes his own statement, positive endorsements from his current chain of command, and several other items which he believes will substantiate his position.

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. It would appear that there were two separate requirements for absentee reporting. One was briefed and posted for the students by the school staff at DLIFLC and one by the Marine Detachment. Based on the letter at enclosure (3) to reference (a) from the Military Language Instructor (SFC Lyonais), the petitioner met the intent for reporting absences as required by the Policies and Procedures for Class Leaders. Where he failed was in meeting his obligation to the Commanding Officer of the Marine Detachment (documented in the counseling entry at enclosure (2) to reference (a) and by the challenged fitness report). The petitioner opted to forego statements to either the Page 11 counseling entry or the fitness report at issue. In this regard, the Board must presume that the petitioner passively accepted the accuracy of both documents and had no extenuating or mitigating circumstances to present.

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

b. The petitioner has offered absolutely no documentary evidence whatsoever to prove his allegations that his absences were due to medical reasons or that the report itself contains "false statements" (i.e., that he missed only six hours of class vice 60). Finally, while paragraph nine of enclosure (5) to reference (a) indicates that Student Leaders will ensure that all students in their respective class/section are thoroughly familiar with the absence policy outlined in chapter four of that directive, we note the petitioner has chosen to not provide the excerpt from that chapter. Nevertheless, there still evidently remained two separate requirements for reporting absences.

c. In his 11 July 2000 endorsement of reference (a), Lieutenant Colonel [REDACTED] contends the petitioner was the victim of a "turf battle." Other than his opinion, however, there is nothing to corroborate such a claim. The petitioner was aware that, by established policy of the Commanding Officer, Marine Detachment, his absences were to be reported. Simply stated, he failed.

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



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

IN REPLY REFER TO:
1070
MIF
17 JAN 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

1. We reviewed Sergeant [REDACTED]'s application and supporting documents concerning his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 990310.
2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make Service Record Book entries on page 11 for recording information that is not, or cannot be, documented anywhere else in the Service Record Book or the Marine's automated record.
3. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation.
4. The following comments concerning the page 11 entry dated 990310 are provided:
 - a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found, and states that Sergeant [REDACTED] is provided the opportunity to make a rebuttal statement. Additionally, he was afforded an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in his service record. Sergeant [REDACTED] acknowledged the counseling entry by his signature and further chose "not to" make a statement in rebuttal.
 - b. Deficiencies listed in Sergeant [REDACTED] page 11 entry address infractions that are punishable under the Uniform Code of Military Justice (UCMJ), however, his Commander elected to counsel him on them instead. These deficiencies focused around his assigned duties and responsibilities as Class Leader for Teaching Team C-1, while attending the Defense Language Institute, Presidio of Monterey, California.

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

c. Sergeant [REDACTED] claim that he "was never charged with violating the Uniform Code of Military Justice (UCMJ)." and that he was never "read my Article 32 Rights." is irrelevant. As stated in paragraph 3 above, Sergeant [REDACTED] commander elected to counsel instead of discipline him for these deficiencies.

d. Due to Sergeant [REDACTED] seniority in rank and service, he was assigned Class Leader of Teaching Team C-1. One of his responsibilities included personnel accountability of all members of his team. As a class leader, he was in a position that also required accountability of himself and it appears that his commander held him to a standard of a higher level than his peers.

e. Sergeant [REDACTED] claim that "these documents are false statements and unsupported claims against me" is irrelevant. The event, counseling by his commander, did happen, and it was properly documented. It is also noted that he does not provide substantiating documentation to support his claim.

f. Sergeant [REDACTED] claim that "The detachment procedures were not posted in any way, anywhere within the Detachment." is not supported by documented evidence. Sergeant [REDACTED] assigned to a position, Class Leader supervising thirty students of all branches of service, a position that required him to be knowledgeable of current policies and procedures in order to perform those duties. Paragraph 9 of enclosure (5) specifically addresses that he was responsible for knowing what the absence policy was and "will ensure that all students in their respective class/section are thoroughly familiar" with that policy.

g. Sergeant [REDACTED] acknowledges in paragraph 5 of his letter that he was appraised of school policies and procedures on the first day of class. Enclosure (5) outlines those procedures and also indicates that the school's "AD" was responsible for the student leaders and will conduct meetings as needed to address concerns and offer guidance. Additionally, the "AD" provides "leadership performance input on student leaders to the appropriate Service commander as requested."

h. Sergeant [REDACTED] commander determined that the deficiencies contained in the page 11 entry were the result of an extraordinary incident that had occurred and the circumstances suggest a significant departure from the expected level of professionalism and judgment.

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

i. Sergeant [REDACTED] Commander determined that the deficiencies contained in the page 11 entry were of permanent value to Sergeant [REDACTED] career, thereby documenting this event per the provisions of the IRAM.

5. In view of the above, it is recommended that Sergeant [REDACTED] request for removal of the Administrative Remarks(1070) NAVMC 118(11) page 11 entry dated 990310 be disapproved.

6. Point of contact is Mr [REDACTED]

[REDACTED]

Acting
Head, Field Support Branch,
Manpower Management Information
Systems Division



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

8381-00
IN REPLY REFER TO:
1400/3
MMPR-2
24 Jan 01

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

Subj: ADVISORY OPINION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] CMC

Ref: (a) CMC ltr 1450/5 MMPR-2 of 20 Oct 99

1. Sergeant [REDACTED] requests removal of the Page 11 entry, the adverse fitness report for the period dated 981001 to 990331 (AN), and reinstatement of his selection to staff sergeant for the 2000 Staff Sergeant Selection Board.

2. The Commandant of the Marine Corps (CMC) administratively deleted Sergeant [REDACTED] name from the 2000 Staff Sergeant selection list after his failure to maintain the high standards of personal and professional performance expected of a staff noncommissioned officer. The reference applies.

3. Since Sergeant [REDACTED] records have not changed, he is not eligible for the reinstatement of his selection to the grade of staff sergeant. It is recommended that his petition for reinstatement to staff sergeant be [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] SERGEN
Head, Enlisted Promotion Section
Promotion Branch
By direction of
the Commandant of the Marine Corps