



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

BJG
Docket No: 4216-02
24 May 2002

GYSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Gunnery 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.

It is noted that the Commandant of the Marine Corps (CMC) has directed that the contested fitness report for 29 June to 5 September 2000 be modified by changing item 3a (occasion) from "CH" (change of reporting senior) to "TR" (transfer).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 May 2002. 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 16 April 2002, 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. In this connection, the Board substantially concurred with the comments contained in the report of the PERB.

You assert that the reporting senior comments in section D and the reviewing officer comments contradict each other, "as one says [you are] responsible for student progress and the other says it is an individual effort." The Board did not find comments of the kind you are citing. Although the three supporting statements you provide do indicate there was no formal policy against sleeping in the safety vehicle, the reporting senior states, in section F, that you did this after he had told you that you were "not to do it again." While your rebuttal to the report says you "do not recall" having been told this, the Board was unable to find you were not told. The supporting statements did not convince them that the contested fitness

report was in any way erroneous or unjust. Finally, they were unable to find the contested fitness report was in reprisal for your having requested detachment.

In view of the above, 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
APR 16 2002

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
GUNNERY SERGEANT [REDACTED] USMC

Ref: (a) GyS [REDACTED] DD Form 149 of 12 Dec 01
(b) MCO P1610.7E w/C 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 10 April 2002 to consider Gunnery Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 000609 to 000905 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report violates the spirit and intent of reference (b) in several areas. It is his belief that the report was used as a counseling tool; that the occasion is incorrect; that the minimum observation period was violated; that the Reviewing Officer failed to resolve inconsistencies and disagreements; that he was not allowed to acknowledge the Reviewing Officer's remarks and was not provided a copy of the report by the Reviewing officer; that the completed report was never mailed to him; that he was not given an opportunity to respond to the Third officer Sighting comments; and that the report was not submitted to this Headquarters within the allotted 30-day timeframe. The petitioner also objects to entries in Sections D and F and believes the report is both unfair and inaccurate.

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

a. Although the report at issue covers less than 90 days of observation, the Reporting Senior was well within his prerogative in rendering the fitness report as an observed evaluation. This is especially germane given the contents of the report **and** the fact that the petitioner and these same two reporting officials had an already-established reporting history

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
GUNNERY [REDACTED] USMC

(i.e., the fitness reports for the periods 990814-991001 and 991001-000515).

b. Contrary to the petitioner's arguments, there is absolutely no showing that the report was used as a "counseling tool." In all respects it appears to be a valid documentation of performance during the stated period. Likewise, the Reviewing Officer (Sergeant [REDACTED]) did a thorough and detailed job in resolving all inconsistencies and factual disagreements. He explained the entire situation, how the command attempted to assist the petitioner, and that he himself had personally counseled the petitioner. There was no requirement for Sergeant [REDACTED] to solicit input from other staff members to clarify anything.

c. Since neither the Reviewing Officer nor the Third Sighting Officer introduced any new or additional adverse material, the petitioner was correctly not afforded an opportunity to sight, acknowledge, and respond to their respective comments. That he was never provided nor mailed a copy of the completed report has not been documented. Even if that were the case, it would not invalidate the report or cause this Board to question the report's validity, accuracy, or fairness.

d. While the late submission of fitness reports is certainly not condoned, neither does that fact warrant removing an otherwise acceptable evaluation. In this regard, the Board discerns absolutely no error or injustice.

e. The petitioner is correct concerning the occasion of the report. Item 3a should have been "TR" since the petitioner was transferring to a new duty station. The Board has directed a change to that entry.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Gunnery Sergeant [REDACTED]'s official military record. The limited corrective action identified in subparagraph 3e is considered sufficient.

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
GUNNERY SERGEANT [REDACTED] USMC

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