



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

BJG
Docket No: 4220-02
23 May 2002

[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 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 18 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. They found the third sighting officer's nonconcurrence with the report did not invalidate it. 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

IN REPLY REFER TO:

1610
MMER/PERB
APR 18 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
SERGEANT [REDACTED] USMC

Ref: (a) Sgt [REDACTED] DD Form 149 of 16 Feb 02
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 17 April 2002 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 971231 to 980427 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner believes the report represents an "injustice" since his excess weight was a product of a medical situation. To support his appeal, the petitioner furnishes copies of excerpts from his medical record and directs the Board's attention to the nonconcurrence by the Third Sighting Officer.

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. Nothing has been provided, either in the report at issue or the documents included with reference (a), that shows the petitioner's weight gain was acceptable or a direct result of his back problems and subsequent surgery. Rather, the seven selected pages from the petitioner's medical record address the injury and surgery, not diet and weight control. Simply stated, the petitioner was not within Marine Corps height/weight standards and the fitness report correctly reflected that fact. In this regard, the Board discerns absolutely no error or injustice.

b. As a matter of information, the Board observes the following relative to the petitioner's weight:

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(1) On the ending date of his fitness report for the period 970701 to 971231 (CH), the petitioner weighed 192 pounds. This was approximately three months after his back injury.

(2) On 28 January 1998 the petitioner's weight was documented at 200 pounds (enclosure (3) to reference (a)).

(3) On the ending date of the fitness report under consideration, the petitioner's weight was 210 pounds.

Surgery on 17 February 1998 notwithstanding, we find no documented medical excuse for the 18-pound weight gain between 1 January and 27 April 1998.

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