



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

BJG
Docket No: 5330-01
21 March 2002

SG [REDACTED] II USMC
[REDACTED]
[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.

It is noted that the Commandant of the Marine Corps (CMC) has directed that the contested fitness report for 22 December 1998 to 17 February 1999 be modified by deleting the following from section I: "violation of article 92 of the UCMJ [Uniform Code of Military Justice], disobedience of a lawful order, to wit,."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 21 March 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 (HQMC) Performance Evaluation Review Board (PERB), dated 2 July 2001, and the advisory opinion from the HQMC Manpower Management Information Systems Division (MIFD), dated 9 August 2001, copies of which are 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 and the advisory opinion from MIFD. 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

Enclosures

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



IN REPLY REFER TO:

1610
MMER/PERB
2 JUL 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
SERGEANT ██████████ USMC

Ref: (a) Sergeant ██████████ DD Form 149 of 3 Apr 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 27 June 2001 to consider Sergeant ██████████'s petition contained in reference (a). Removal of the fitness report for the period 981222 to 990217 (FD) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends there is no justification for the adverse report, and that a review of the report by the Reporting Senior and Third Sighting Officer was not conducted as required by reference (b). To support his appeal, the petitioner furnishes his own detailed statement.

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

a. At the outset, the Board emphasizes that when the petitioner acknowledged the adverse nature of the report (evidence his signature in Section J2), he clearly indicated he had no statement to make. In so doing he acquiesced to the report's adversity (so rendered by the comments in Section I) and passively concurred in the accuracy of the evaluation without presenting any extenuating or mitigating circumstances.

b. The Board is not sure to what the petitioner refers when he indicates the report is not a "double signer." His signature was required in Section K6 **only** if the Reviewing Officer included new or additional adverse material. In this regard, the Board emphasizes that when a Reviewing Officer marks "insufficient" in Section K1, the remainder of that Section is left blank. Hence, Lieutenant Colonel ██████████ was in full

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

compliance with the provisions of reference (b) by omitting a comparative assessment or by not providing narrative comments.

c. Contrary to the petitioner's assertion, the report was Third Sighted, albeit in the form of an "administrative review" by this Headquarters.

d. The Board agrees with the petitioner concerning the comments referring to a violation of the UCMJ. They do not, however, find complete removal of the report necessary. Instead, elimination of the following verbiage has been directed: "violation of article 92 of the UCMJ, disobedience of a lawful order, to wit," When corrected, Section I will read as follows: "MRO was disenrolled from Senior Clerk course 2-99 for pursuing an improper relationship with entry level students and entering entry level student's barracks rooms."

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

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
MIFD

AUG 09 2003

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

1. Sergeant [REDACTED]'s application with supporting documents has been reviewed concerning his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 990217 from his service records.
2. MCO P1070.12J, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 which are considered matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book or the Marine's automated record.
3. MCO 1610.12, the U.S. Marine Corps Counseling Program states that:
 - a. "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance.
 - b. Increase individual performance and productivity through counseling and thereby increases unit readiness and effectiveness.
 - c. Counseling enhances the leader's ability to improve the junior's performance."
4. 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. In cases involving unsatisfactory performance, pattern of misconduct, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriate counseling and personnel records.

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

5. The following comments/opinions concerning the page 11 entry dated 990217 are provided:

a. The counseling entry does meet the elements of a proper page 11 counseling in that it lists deficiencies, recommendations for corrective action, available assistance, and states that Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, the entry affords him 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 the Service Record Book (SRB).

b. Sergeant [REDACTED] acknowledged the counseling entry by his signature and indicated his desire "not to" make a statement in rebuttal.

c. Sergeant [REDACTED] was assigned to the Senior Clerk Course at the Marine Corps Combat Service Support Schools (MCCSSS), Camp Lejeune, NC at the time of the alleged error in his records. MCCSSSO P5000.1P, MCCSSS Academic Standing Operating Procedures Manual, contains guidance and policy concerning all personnel assigned to MCCSSS. Paragraph 2000.2 requires each class to receive an introductory orientation prior to or on the day the class convenes. One of the subjects that is required to be presented is the Marine Corps and local command policy on hazing and fraternization. Sergeant [REDACTED] states that he did receive "limited fraternization information" while assigned to the school.

d. Sergeant [REDACTED] does not provide documented evidence to support his request for removal of the page 11 from his service records.

6. In view of the above, it is recommended that:

a. The Board for Correction of Naval Records disapprove Sergeant [REDACTED]'s request for removal of the Administrative Remarks (1070), NAVMC 118(11), page 11 entry dated 990217 from his service records.

b. If the Board for Correction of Naval Records finds that Sergeant [REDACTED]'s records are in error or an injustice was committed, remove the Administrative Remarks (1070), NAVMC 118(11), page 11 entry dated 990217 from his service records.

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

7. Point of contact [REDACTED] at DS [REDACTED]

[REDACTED]
[REDACTED]

Director
Manpower Management Information
Systems Division