



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

BJG
Docket No: 5607-01
21 March 2002

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 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 13 July 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. In this connection, the Board substantially concurred with the comments contained in the report of the PERB in finding that the contested fitness report should stand. Since the Board found no defect in your performance record, they had no basis to recommend granting you remedial consideration for promotion or striking your failure of selection to staff sergeant. 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

5607-01

IN REPLY REFER TO:
1610
MMER/PERB
13 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 [REDACTED] USMC

Ref: (a) Sergeant [REDACTED]'s DD Form 149 of 1 May 01
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 11 July 2001 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 980921 to 990331 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that although the report is not adverse, the Reviewing Officer's assessment nevertheless reflects a biased evaluation of his performance. The petitioner bases his position on the Reviewing Officer's previous role as the Battery Commander and on the fact that the Reviewing Officer's observation is based on an "occasional" review (of his performance) as opposed to the Reporting Senior's "daily" review.

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. In Section K4, the Reviewing Officer specifically identified the inflated nature of the report. This was a matter he discussed with the Reporting Senior; however, First Lieutenant [REDACTED] decided to let his markings stand. That was his prerogative. Likewise, it was the Reviewing Officer's prerogative to nonconcur. He did so and succinctly justified that action. In this regard, there is no adversity associated with his nonconcurrence, nor any perception of bias.

b. The Board observes that the Reviewing Officer's actions and comments are in full compliance with the provisions of sub-

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

paragraphs 4014.2d(2)(a) and 4014.3b of reference (b). Simply stated, Captain [REDACTED] did precisely what is expected, and to this end the Board discerns absolutely no error or injustice.

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