



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

BN

BJG
Docket No: 8696-02
7 November 2002

SCF [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 7 November 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 27 September 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. Accordingly, 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

869602

IN REPLY REFER TO:

1610
MMER/PERB
SEP 27 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) Sergeant [REDACTED] DD Form 149 of 20 Jul 02
(b) MCO P1610.7E w/Ch 1-2

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 September 2002 to consider Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 000401 to 001101 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner states the challenged report is "undeserved", yet provides no statement in his own behalf. Instead, his current Company Commander, Captain [REDACTED], furnishes a detailed analysis as to why he believes the report is both inaccurate and unjust.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. We offer the following as relevant:

a. Captain [REDACTED] contends the Reviewing Officer was not present during the entire period and states the following: "Sgt [REDACTED] Reporting Senior (RS) did evaluate him from April until December 2001 and wrote [REDACTED] a fitness report that was not adverse; however, his RO reflected that he had also evaluated [REDACTED] performance since April 2001 and he had not." This statement is not accurate! The Reviewing Officer made no such comment. In Section K, the Reviewing officer merely checked "sufficient" observation (Item K1) and indicated his nonconcurrency with the report in Item K2. Regardless of when Major [REDACTED] assumed command of Weapons Company, on the ending date of the fitness report at issue he was the rightful Reviewing Officer.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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b. The Board does not accept Captain [REDACTED]'s argument that the petitioner's failure was due to a lack of formal training. A review of the "Military Education" information on the petitioner's Master Brief Sheet reflects that, among other training, the petitioner completed the following: Sergeant non-resident (1996), Light Armored Vehicle (1998), and LAV Officer (1999). This education, as well as prior billets as a Platoon Guide, Squad Leader/Vehicle Commander, and Platoon Sergeant would certainly have aided the petitioner in his billet assignment (Vehicle Commander) during the period covered by the challenged fitness report. The foregoing notwithstanding, the Board observes that a majority of the petitioner's failings were the result of his attitude and had nothing to do with his lack of formal training.

c. Again, the Board does not accept Captain [REDACTED]'s argument that the word "draft" on the Addendum Page containing the petitioner's rebuttal implies that document is nothing more than a "draft working copy." Simply stated, the Addendum Page has been signed/dated by the petitioner and is considered a valid document. The word "draft" does not somehow invalidate the petitioner's statement.

d. In paragraph five of his letter, Captain [REDACTED] identifies enclosure (9) thereto as a "letter from the third officer who sighted the adverse RO comments" supporting removal of the report. Again, this statement is inaccurate and totally misleading. The letter at enclosure (9) to Captain [REDACTED] is another letter signed by him in which he states that an attached e-mail from Lieutenant Colonel [REDACTED] supports removal of the report in question. Succinctly stated, Lieutenant Colonel [REDACTED] made no such statement in his e-mail, either overtly or by innuendo.

e. The issue is not whether the petitioner's performance and conduct have improved since he received the challenged fitness report. The only issue is the accuracy and fairness of that evaluation. Captain [REDACTED]'s analysis notwithstanding, the Board discerns absolutely no error or injustice. Likewise, they find nothing to document precisely how or why the petitioner may have rated more than what has been recorded.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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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