



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

BJG  
Docket No: 8393-06  
6 October 2006

[REDACTED]

[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.

You requested removing the fitness reports for 1 July 2001 to 30 June 2002, 7 July 2002 to 2 March 2003 and 1 August 2003 to 1 April 2004. It is noted that the Commandant of the Marine Corps (CMC) has directed removing the fitness reports for 1 July 2001 to 30 June 2002 and 1 August 2003 to 1 April 2004.


A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 2006. 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 29 August 2006, 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

concluded with the comments contained in the report of the PERB in concluding the remaining contested fitness report, for 7 July 2002 to 2 March 2003, should stand. The Board was unable to find this report was in retaliation for the outcome of a conflict between you and two Marine officers concerning the marks assigned a junior Marine. The Board noted this report properly did not mention your Navy and Marine Corps Achievement Medal given on 12 May 2003, after the reporting period. The two supporting statements you provided, dated 19 March 2006 and 10 October 2005, from a Marine Corps colonel and lieutenant colonel, respectively, did not persuade the Board that you warranted an appraisal other than that which you received. The colonel was not in your fitness report chain; and the statement from the lieutenant colonel related to your performance since October 2004, after the pertinent reporting period. 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  
AUG 29 2006

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  
[REDACTED]

Ref: (a) [REDACTED] DD Form 149 of 26 Apr 06  
(b) MCO P1610.7E w/Ch 2-9

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 23 August 2006 to consider [REDACTED] petition contained in reference (a). Removal of his fitness reports for the periods 20010701 to 20020630 (AN), 20020707 to 20030302 (TD) and 20030801 to 20040401 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the reports are unjust because they do not accurately assess his overall performance. His primary allegations focus on bias and an improper reporting chain.

3. In its proceedings, the PERB concluded that the report covering the period 20020707 to 20030302 (TD) is administratively correct and procedurally complete as written and filed. The reports covering the periods 20010701 to 20020630 (AN) and 20030801 to 20040401 (CH) are administratively and procedurally incorrect. The following is offered as relevant:

a. Based on research by this headquarters, the PERB concluded that the reviewing officer listed on the reports, covering the periods 20010701 to 20020630 (AN) and 20030801 to 20040401 (CH), was not the proper reporting official. Therefore, the Board found that the reports are administratively and procedurally incorrect and directed that the reports be expunged from the petitioner's record.

b. In regard to the report covering the period 20020707 to 20030302 (TD), the petitioner contends the report is inaccurate based on the reviewing officers non-concurrence with the reporting senior's attribute markings. The Board concluded that

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF

[REDACTED]

because the reviewing officer non-concurs with a reporting senior's overall evaluation, the report is not inaccurate. In this case, both reporting officials articulated their opinions and provided what they believe to be an accurate assessment of the petitioner's performance.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, covering the period, 20020707 to 20030302 (TD), should remain a part of Staff Sergeant [REDACTED] official military record and the reports covering the periods 20010701 to 20020630 (AN) and 20030801 to 20040401 (CH) be expunged from his official military record.

5. The case is forwarded for final action.



J. L. TERRY  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps