



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

bn

JSR
Docket No: 6544-08
28 August 2008

[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.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested report for 8 February to 21 April 2008 by removing from section I (reporting senior's "Directed and Additional Comments") "[You have] limited growth potential."

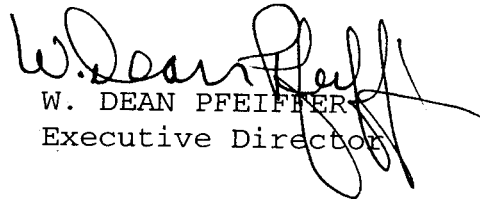
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 August 2008. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 30 June 2008, 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 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, VA 22134-5103

IN REPLY REFER TO:

1610
MMER/PERB

JUN 30 2008

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 10 Jun 08
(b) MCO P1610.7F

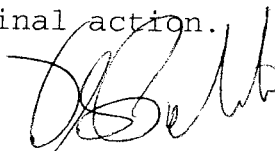
1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 June 2008 to consider [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 20080208 to 20080421 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.
2. The petitioner requests that this entire report be removed, or at least certain comments be expunged. He argues that the report contains negative comments and that he was never counseled, nor was he afforded the opportunity to "argue his case". He did not submit any additional document in support of his appeal.
3. In its proceedings, the Board concluded that the report has a correctible administrative error but is procedurally complete as written and filed. The following is offered as relevant:
 - a. The Board agreed with the petitioner that the report does contain an inappropriate comment in Section "I", and has directed the removal of the phrase, [REDACTED] has limited growth potential."
 - b. The remaining comments appealed by the petitioner, the Board found to be in compliance with reference (b). Therefore, there is no basis to remove them. The petitioner requested that the comments referencing his medical condition be removed, however the Board found that those comments serve as justification for his inability to take a Physical Fitness Test (PFT) or fire on the rifle range. They are factual statements and reportable in accordance with reference (b).

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
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[REDACTED]

c. Finally, the petitioner argues that he was not afforded the opportunity to argue his case. The Board notes that because this was not submitted as an adverse report, there is no provision for the petitioner to have rebutted the report. However, the Board appreciates the petitioner's desire to do so in light of the adverse comment in Section "I", however, this Board has approved the removal of that comment, thus rendering this argument moot.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of [REDACTED] official military record.

5. The case is forwarded for final action.



FRANCES S. POLETO
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps