



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

IN REPLY REFER TO:

1610

MMER/PERB

24 Sep 10

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
STAFF SERGEANT CARLOS D. CAMPBELL JR., XXX XX 3589, USMC

Ref: (a) SSgt Campbell's DD Form 149 of 9 Apr 10
(b) MCO P1610.7F

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 25 August 2010 to consider Staff Sergeant Campbell's petition contained in reference (a). Removal of the fitness report for the period **20070101 to 20071231 (AN)** was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner received this adverse fitness report for demonstrated judgment and decision making that caused the Reporting Senior (RS) to lose trust and confidence in his ability to serve as the Staff Noncommissioned Officer In Charge (SNCOIC) of a recruiting substation (RSS). He now requests through counsel to have the report expunged arguing that the report is the result of undue command influence and includes incorrect statements.

3. In its proceedings, the Board concluded that the report is administratively and procedurally complete as written and filed. The following is offered as relevant:

a. Counsel for the petitioner alleges that while serving as the Senior Defense Counsel at MCRD, Parris Island, he gained first hand knowledge of the recruiting district commander having abused his authority in regard to military justice, and that this abuse became "infamous". That may or may not be true, but the Board notes that this appeal does not include any proof that abuse of power was at play in the submission of this report. The Commanding Officer's (CO) previous actions have no relevance to this fitness report. If this CO was proven to have an established pattern of behavior, there is still nothing that ties that pattern to this report.

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b. In the Section I comments, the Reporting Senior (RS) appropriately notes the petitioner's period of non-availability which was apparently spent in the hands of civilian authorities while the petitioner was incarcerated. Counsel argues that because the petitioner was eventually found not guilty on three federal charges that this report should not have been rendered adverse. However, the Board notes that this report is not adverse due to the petitioner's pending charges or because he was incarcerated. The recorded adversity of this report is the petitioner's poor judgment and decision making. Although the petitioner was found not guilty of all charges, and was found to lack criminal intent; this does not find him innocent of poor judgment and decision making ability. The reporting officials make no reference to the petitioner's pending civilian charges in this report.

c. The RS comments on the petitioner's satisfactory performance of duty as a recruiter. The RS rightfully made no reference to the petitioner's arrest by the Federal Bureau of Investigation (FBI), pending charges, incarceration and trial. The Board found that although this report lacks specificity, due to the nature of the circumstances it was not necessary for the reporting officials to include the specifics of why they believe the petitioner exercised poor judgment and decision making skills. Clearly, the petitioner was well aware of why this report was rendered adverse. He acknowledged the report and in his rebuttal merely argues that it did not comply with ref (b), but he did not dispute the recorded adversity. He clearly chose not to introduce the specifics of the adversity in his rebuttal. The Board notes that this report does not include anything that is not already recorded in the petitioner's Official Military Personnel File (OMPF) and Service Record Book (SRB).

d. The Board concluded that this is an appropriately submitted adverse report. The petitioner exercised his opportunity to provide a rebuttal, which was appropriately adjudicated by the 3rd Officer Sighter. The petitioner, through counsel, failed to meet the burden of proof necessary to substantiate an error or injustice warranting the removal of this report.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report covering the period **20070101 to 20071231 (AN)** should remain a part of Staff Sergeant Carlos D. Campbell's official military record.

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5. The case is forwarded for final action.



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