



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

Docket No. 6659-16
DEC 20 2017

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] JSMC

Ref: (a) Title 10 U.S.C. §1552
(b) MCO P1400.32D w Ch 1

Encl: (1) DD Form 149 of 27 Jul 16 and 17 Nov 16
(2) CO, [REDACTED] tr CO of 7 Mar 16
(3) HQMC memo 1400 MMRP-2 of 1 Jun 17

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting that his Staff Sergeant date of rank (DOR) be adjusted and that he receive remedial consideration by the FY14 Gunnery Sergeant Remedial Promotion Selection Board (ERSB).
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 October 2017 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. On 7 January 2011, the Petitioner, then a Sergeant, received nonjudicial punishment (NJP). Consequently, he was issued an adverse fitness report for the reporting period 1 May 2010 to 7 January 2011.
 - c. Petitioner was promoted to the Staff Sergeant with a DOR and effective date of 1 February 2012.

d. On 4 January 2016, the Headquarters, Marine Corps Performance Evaluation Review Board (PERB) removed the adverse fitness report from Petitioner's official military personnel file (OMPF). On 7 March 2016, his NJP was set aside and his SSgt DOR and effective date was adjusted to 1 July 2011, and "all rights, privileges, and property affected by virtue of this punishment shall be restored." See enclosure (2).

e. On 11 January 2016, the Petitioner submitted a request to Headquarters, Marine Corps (MMPR-2) for consideration by an ERSB. Petitioner's request for remedial consideration was denied on 2 February 2016 due to his failure to exercise due diligence in correcting his record in a timely manner.

f. Petitioner was selected for promotion by the FY16 Gunnery Sergeant Promotion Selection Board and promoted with a DOR of 1 October 2016.

g. In his enclosed applications to the BCNR, Petitioner contended that because his NJP was set aside, his adverse fitness reports removed from his OMPF, and his SSgt DOR adjusted, he should be granted remedial consideration by the FY14 Gunnery Sergeant ERSB. He asserted that he was unaware of the required steps to get the NJP removed until 2016, when a Sergeant Major guided him through the proper procedures.

h. The Advisory Opinion (AO) recommended Petitioner's record remain unchanged because, in accordance with Marine Corps policy, he cannot receive remedial promotion consideration for a rank currently held (i.e., he has already been promoted to GySgt). Additionally, the AO opined in part, that Petitioner had already requested remedial consideration for promotion to Gunnery Sergeant and was denied by Headquarters, Marine Corps on 2 February 2016 due to his failure to exercise due diligence. The AO further opined that if the Board grants relief, Petitioner's DOR to Gunnery Sergeant could be backdated to 1 January 2015, the date he would have received if selected by the FY14 Gunnery Sergeant Promotion Selection Board. Alternatively, if the Board grants an FY14 Gunnery Sergeant ERSB, Petitioner will compete for promotion in order to determine if he was competitive amongst his peers. See enclosure (3).

CONCLUSION

Upon review and consideration of all the evidence of record and notwithstanding the opinion expressed in enclosure (3), the Board finds the existence of an injustice warranting corrective action. In this regard, the Board noted that an adverse fitness report was removed from Petitioner's OMPF, and upon the set aside of Petitioner's NJP on 7 March 2016, his DOR in the grade of SSgt was adjusted to 1 July 2011. Further, "all rights, privileges, and property affected by virtue of this punishment shall be restored." Although Petitioner's previous request for an ERSB was denied by Headquarters, Marine Corps, the Board concluded that since Petitioner's NJP was set aside and his adverse fitness report was removed by the PERB in 2016, the Marine Corps shall invoke an exception to policy and grant Petitioner an FY14 Gunnery Sergeant ERSB in order for him to compete for promotion and DOR with his FY14 peers.

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner shall be considered by an FY Gunnery Sergeant ERSB that corresponds with the first Gunnery Sergeant Promotion Selection Board of his category, that he would have been eligible for (in-zone), had he not received NJP.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]
Recorder

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]
Executive Director

Reviewed and Approved / Disapproved

[REDACTED]
1-8-2018