



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

█
Docket No: 3579-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
XXX XX █ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MARADMIN 090/16
(c) MARADMIN 087/17
(d) MARADMIN 111/18
(e) BCNR Docket No: NR20180009824
(f) MARADMIN 120/19
(g) BCNR ltr JDR Docket No. 9824-18 of 5 May 20
(h) MARADMIN 274/20
(i) MCO 1400.32D w/CH 1-2

Encl: (1) DD Form 149 w/enclosures
(2) Petitioner's ltr of 16 Apr 18
(3) CMC ltr 1420/2 MMPR-2 of 13 May 21

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting his naval record be corrected by granting remedial consideration by the Fiscal Year (FY) 2016 through FY 2019 Gunnery Sergeant Promotion Selection Boards.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 18 November 2021, and pursuant to its regulations, determined 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 the 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 21 May 2015, Petitioner was issued an Administrative Remarks (Page 11) 6105 counseling for his failure to requalify with his table of organization weapon. The following month, Petitioner was issued an adverse fitness report for the reporting period 1 January 2015 to 3 June 2015. On 3 June 2015, he was issued a Page 11 counseling for failing to take corrective action regarding his deficiencies and because he had been formally relieved of his duties.

c. Per reference (b), the FY 2016 Gunnery Sergeant Promotion Selection Board convened 20 April 2016. Petitioner was considered in-zone and not selected. Per reference (c), the FY 2017 Gunnery Sergeant Promotion Selection Board convened 19 April 2017. Petitioner was considered above-zone and not selected.

d. The FY 2018 Gunnery Sergeant Promotion Selection Board convening notification, reference (d), was released 20 February 2018.

e. On 16 April 2018, Petitioner submitted reference (e) requesting removal of his fitness report for the reporting period 1 January 2015 to 3 June 2015 and the 3 June 15 Page 11 counseling entry. On the same date, Petitioner submitted enclosure (2), a letter to the President of the FY 2018 Gunnery Sergeant Promotion Selection Board.

f. The FY 2018 Gunnery Sergeant Promotion Selection Board convened on 18 April 2018. Petitioner was considered above-zone and not selected. Per reference (f), the FY 2019 Gunnery Sergeant Selection Board convened 17 April 2019. Petitioner was considered above-zone by the FY 2019 promotion selection board and not selected.

g. Per reference (g), on 5 May 2020, the Board directed removal of Petitioner's 21 May 2015 and 3 June 2015 Page 11 counseling entries and his contested adverse fitness report for the reporting period 1 January 2015 to 3 June 2015.

h. Per reference (h), the FY 2020 Gunnery Sergeant Promotion Selection Board convened on 7 July 2020. Petitioner was considered above-zone and selected. He was promoted to gunnery sergeant effective 1 September 2020.

i. On 31 March 2021, Petitioner requested remedial promotion consideration by the FY 2016, FY 2017, FY 2018, and FY 2019 Gunnery Sergeant Selection Boards. The Headquarters, Marine Corps Promotions Branch (MMPR) disapproved the request because, per reference (i), a Marine cannot receive remedial promotion consideration for a grade currently held. Enclosure (3).

j. Per reference (i), a fitness report being removed, amended, or replaced by the Board is one of the types of cases most commonly approved for consideration by the Enlisted Remedial Selection Board (ERSB). After corrective action is taken, the Marine must submit a request to MMPR-2. A request for remedial consideration must clearly show what actions the Marine took to correct the material error *prior to* the convening date of the regular selection board in order to satisfy the requirements of due diligence (emphasis added). Due diligence requires a Marine to identify errors, discrepancies, or an injustice in his record in a timely manner and initiate appropriate corrective action. The exercise of due diligence by a particular Marine can be determined by the presence, or absence, of certain factors such as those listed in reference (i). The referenced guidance also states Marines will "normally be granted remedial consideration for all selection boards affected by the error or injustice, beginning with the first board following the error or injustice, except where the provision of [due diligence] or other restrictions apply."

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined Petitioner's request warrants partial relief.

The Board determined the record reviewed by the FY 2016 through FY 2019 Gunnery Sergeant Promotion Selection Boards contained error that may have negatively impacted Petitioner's record. However, considering the guidance in the referenced MARADMINs, applying the guidance regarding due diligence contained in reference (i), and noting the timeline of Petitioner's actions with respect to identifying and taking steps to remove the Page 11 counseling entries and fitness report issued in 2015, the Board determined Petitioner did not exercise due diligence prior to the FY 2016 and FY 2017 because the record does not indicate he took any action with regards to the derogatory material in his record. Additionally, the Board determined Petitioner's submission of reference (e) on 16 April 2018, two days before the convening date of the FY 2018 Gunnery Sergeant Promotion Selection Board, did not constitute due diligence with respect to the FY 2018 board, however, the corrective steps were considered due diligence with respect to the FY 2019 Gunnery Sergeant Promotion Selection Board.

The Board, noting the requirement for an exception to the policy relied upon by MMPR in their disapproval (see enclosure (5)) of Petitioner's request of 31 March 2021, concluded an ERSB should be convened to consider Petitioner for selection by the FY 2019 Gunnery Sergeant Selection Board.

RECOMMENDATION

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

HQMC (MMPR-2) convene an ERSB to consider Petitioner for selection by the FY 2019 Gunnery Sergeant Selection Board.

4. 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.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/27/2021

[REDACTED]
Deputy Director

Signed by: [REDACTED]