



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

[REDACTED]
Docket No: 7844-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] [REDACTED]
[REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO P1400.32D w/CH2 (ENLPROMMAN)

Encl: (1) DD Form 149 w/attachments
(2) Screenshot of Petitioner Promotion History
(3) HQMC 1610 MMRP-13/PERB memo w/associated documents, 27 Sep 21
(4) HQMC 1610 MMRP-13/PERB memo w/associated documents, 27 Sep 21
(5) Petitioner Master Brief Sheet

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 a back date of rank in the grade of Master Gunnery Sergeant (MGySgt) to the Fiscal Year (FY) 2021 Promotion Selection Board (PSB). In the alternative, the Petitioner request to be granted an Enlisted Remedial Selection Board (ERSB) for the FY 2021 MGySgt PSB. Petitioner also requests removal of his FY 2021 failure of selection (FOS) to the rank of MGySgt.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 April 2022 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, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner was promoted to the rank of Master Sergeant on 1 May 2017. On 2 November 2020, the FY 2021 MGySgt PSB convened, resulting in the Petitioner's failure of selection while in zone for promotion. Enclosure (2).

c. On 27 September 2021, the Performance Evaluation Review Board (PERB) directed the Petitioner's record be changed, specifically, fitness reports (Fitrep) for the reporting periods of

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1 October 2007 to 1 June 2008 and 1 June 2008 to 30 September 2008 by marking him in block 6 of Section K-3 (Comparative Assessment). Enclosures (3) and (4).

d. On 29 October 2021, the FY 2022 MGySgt PSB convened and the Petitioner was selected for promotion while in the above zone. Petitioner was promoted to the rank of MGySgt on 1 April 2022. Enclosures (2) and (5).

e. Petitioner contends he was passed over for promotion with the erroneous Fitrep markings that have since been corrected. Petitioner asserts that if the discrepancies were corrected prior to the FY 2021 PSB, he would have been selected and promoted with his contemporaries.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In this regard, the Board noted the Petitioner's most recent promotion to MGySgt, however, per reference (b), understood the Petitioner cannot receive remedial consideration for a rank currently held or to which selected. As a result, the Board concluded it was appropriate to grant an exception to policy to allow the Petitioner remedial promotion consideration to MGySgt by the FY 2021 SgtMaj through MGySgt PSB to address the injustice in his case. In making this finding, the Board also determined removal of the Petitioner's FY 2021 FOS was appropriate due to material error in his official military personnel file (OMPF) identified by the PERB after he failed selection.

With regard to the Petitioner's request to back date his date of rank, the Board concluded insufficient evidence exists to support relief based on the lack of evidence that the corrected Fitreps were the sole reason for the FOS. The Board determined the granting of the FY2021 ERSB would sufficiently address any injustice created by the correction of his Fitreps after the FY2021 PSB.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing his FOS to the rank of MGySgt for FY 2021.

Headquarters U.S. Marine Corps (MMPR-2) will forward the Petitioner's case for remedial consideration to the FY 2021 ERSB.

No further action taken.

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.

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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 Regulations, 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.

5/27/2022

[REDACTED]

Executive Director

[REDACTED]