



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

[REDACTED]
Docket No: 2273-22
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MCO P1400.32D w/CH 2 (ENLPROMMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) counseling entry of 14 Sep 21 and Rebuttal Statement of 4 Oct 21
(3) [REDACTED] 1000-1 CO letter of 7 Mar 22

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 removing the Administrative Remarks (Page 11) counseling entry and associated rebuttal statement at enclosure (2) and granting his request for remedial consideration for promotion to Staff Sergeant by the Fiscal Year (FY) 2022 Reserve Staff Noncommissioned Officer Selection Board.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 26 May 2022, 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 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. On 25 June 2021, Petitioner failed the run portion of the Physical Fitness Test (PFT). According to the hospital corpsman, Petitioner was observed limping/walking while on the PFT course prior to completing the event and specifically verbalized he hurt his knee during the run. On 30 June 2021, Petitioner conducted a follow-on partial PFT. See enclosure (3).

c. Petitioner was issued a Page 11 entry on 14 September 2021 counseling him for failing the run portion of the Physical Fitness Test (PFT) on 25 June 2021. On 4 October 2021, he submitted a rebuttal statement explaining he reinjured his knee during the run and the unbearable pain resulted in a failing run time. See Enclosure (2).

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d. Petitioner contends enclosure (2) is in error, unjust, and should be removed. On 14 February 2022, he requested mast with his Commanding Officer (CO). After a second meeting on 18 February 2022 and after attaining the CO's support, Petitioner submitted enclosure (1), on 24 February 2022, requesting removal of enclosure (2).

e. In support of his contentions, Petitioner submitted enclosure (3), a letter from the CO explaining that a preliminary inquiry was conducted and, based on the results of the investigation, the CO determined Petitioner injured himself during the 25 June 2021 PFT and concluded the resulting failure should be stricken from the record. Further, the CO concluded Petitioner should be given credit for a Partial PFT.

f. Petitioner was in-zone but not selected by the FY 2022 Reserve Staff Noncommissioned Officer Selection Board, which convened on 19 January 2022.

g. Reference (b) states the decision to forward a request for remedial consideration will be made based upon the merits of the individual request and timeliness. Further, the exercise of due diligence can be determined by the presence or absence of certain factors such as the Marine taking reasonable steps to correct any errors in his official record prior to a board.

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded Petitioner's request warrants relief. In this regard, the Board, relying on enclosure (3), concluded it was in the interest of justice to remove the 14 September 2021 counseling entry and associated rebuttal statement dated 4 October 2021.

The Board, noting Petitioner requested mast with his CO and submitted his petition for relief on 24 February 2022, after the FY 2022 Reserve Staff Noncommissioned Officer Selection Board, determined an exception to policy was warranted. Specifically, the Board determined it was in the interest of justice to grant Petitioner remedial consideration despite the slight delay in taking steps to correct his official record. The Board further determined the record reviewed by the FY 2022 Reserve Staff Noncommissioned Officer Selection Board contained material error that may have negatively impacted Petitioner's record and concluded Petitioner should be granted remedial promotion consideration by the FY 2022 Reserve Staff Noncommissioned Officer Selection Board.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), the 6105 counseling entry of 14 September 2021 and the associated rebuttal statement dated 4 October 2021.

HQMC (MMPR-2) convene an Enlisted Remedial Selection Board (ERSB) to consider Petitioner for selection by the FY 2022 Reserve Staff Noncommissioned Officer Selection Board, ensuring the removed Page 11 counseling entry is not under review by the ERSB.

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[REDACTED]

That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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.

6/23/2022

[REDACTED]
Executive Director
[REDACTED]