



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

[REDACTED]
Docket No. 3095-22
Ref: Signature Date

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

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

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

Encl: (1) DD Form 149 w/attachments
(2) CMC ltr 1610 MMRP-13/PERB, 11 Aug 21
(3) Petitioner's ltr 1401 CO, 18 Oct 21
(4) CMC ltr 1420/4 MMRP, 3 Feb 22
(5) HQMC Memo 1400/3 MMRP-2, 11 May 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 the convening of a Fiscal Year (FY) 2019 Enlisted Remedial Selection Board (ERSB) to consider him for promotion to Gunnery Sergeant (GySgt).
2. The Board reviewed Petitioner's allegations of error and injustice on 2 August 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 that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.
 - b. The FY 2018 GySgt Promotion Selection Board (PSB) convened on 18 April 2018. Petitioner was eligible, in-zone, and failed selection. Petitioner subsequently failed selection by the FY 2019 through FY 2021 GySgt PSBs. Petitioner asserts that his failures to select were due to an adverse fitness report for the reporting period 10 October 2018 to 29 November 2018 which was in his record and considered by the FY 2019 through FY 2021 PSBs. Enclosure (1).

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

c. On 23 March 2021, Petitioner requested the Headquarters Marine Corps Performance Evaluation Review Board (PERB) remove the adverse fitness report. He contended that it was improperly issued after he failed to pass a physical fitness test (PFT) due to an injury that caused a loss of strength in his arm and shoulder. On 11 August 2021, the PERB having reviewed all the facts of record, removed Petitioner's contested fitness report from his record. Enclosure (2).

d. In light of the PERB's decision to remove the contested adverse fitness report, on 18 October 2021, Petitioner requested to the Manpower Management Promotion Branch, Enlisted Promotions (MMPR-2) remedial consideration for promotion by a FY 2019 GySgt ERSB. Petitioner was instead, granted a FY 2021 GySgt ERSB, in accordance with reference (b). The FY 2021 ERSB did not selected Petitioner for promotion. Enclosures (3) and (4).

e. The advisory opinion (AO) furnished by MMPR-2 noted that pursuant to reference (b), "[r]emedial consideration will not be granted to any Marine who, through the exercise of due diligence, should have been able to discover and correct the error or omission in the official record prior to the convening date of the selection board that considered but did not select, the Marine." The AO also noted that Petitioner did not petition the PERB to remove his adverse fitness report until two years after the FY 2019 PSB convened. MMPR-2 therefore recommended Petitioner's request be denied due to his lack of due diligence in correcting his record prior to the convening of the FY 2019 GySgt PSB. Enclosure (5).

f. In response to the AO, Petitioner furnished a copy of his 18 October 2021 request to MMPR-2 for the convening of a FY 2019 ERSB, which "describes the timeline of events that took place to fix the deficiency and return myself as full duty status . . ." Enclosures (1) and (3).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants favorable action. In this regard, the Board noted that the AO denied Petitioner consideration for a FY 2019 ERSB due to lack of due diligence since his petition to the PERB to remove his adverse fitness report was submitted two years after the FY 2019 GySgt PSB convened on 17 April 2019. However, the Board determined that due to Petitioner's ongoing medical treatment, he was able to demonstrate that he met the burden of proof that he was receiving medical care for a pre-existing injury.

The Board also noted that the Petitioner was not cleared for full duty until on or about 1 October 2019, nearly six months after the FY 2019 PSB convene date. The Board determined that given the duration Petitioner was undergoing medical care, it was unlikely that his focus was on the removal of the contested fitness report, but instead, on his recovery while being treated post-surgery for the same injury that led to his PFT failure and subsequent adverse fitness report. The Board considered that Petitioner might have lacked an understanding of the PERB process and coupled with his continued medical care, may have caused the delay in his request for relief and, therefore, concluded that under these circumstances, relief is warranted.

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

RECOMMENDATION

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

Petitioner be considered by a FY 2019 GySgt ERSB, and if not selected, then Petitioner be considered by a FY 2020 GySgt ERSB. If selected and promoted by either ERSB, his date of rank and effective date in the grade of GySgt/E-7 shall be the date he would have received had he been selected by the regularly convened FY 2019 or, if applicable, the FY 2020 PSB.

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

9/7/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Recommendation (Grant Relief)

Reviewed and Approved Advisory Opinion Recommendation (Deny Relief)

9/23/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]