



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

█
Docket No. 5599-22
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) 10 U.S.C. § 1552
(b) MCO P1400.32D w/Ch 2

Encl: (1) DD Form 149 w/enclosures
(2) CMC ltr 1610 MMRP-13/PERB of 10 September 2021
(3) BCNR Docket No. NR20200006048
(4) CMC ltr 1400/3 MMRP-2 of 16 August 2022

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 backdate of promotion for Gunnery Sergeant (GySgt) to 2015 and remedial promotion to Master Sergeant (MSgt) to FY 2020 based upon the adjusted date of rank (DOR) to GySgt.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 6 September 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. Petitioner requested a backdate of promotion based on this Board's decision to the remove the annual (AN) Fitness Report (FITREP) for the reporting period 2 June 2012 to 31 December 2012 from his record. See enclosures (2) and (3). Petitioner contends that he was not selected for promotion during a 5 year period due to the removed FITREP and argues that he likely would have been selected for promotion sooner had the adverse report been removed earlier. Petitioner further requests a remedial promotion to E-8 based on his belief that an injustice occurred with his non-selections to E-7.

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c. Enclosure (4), an Advisory Opinion (AO) furnished by the Manpower Management Promotion Branch (MMPR-2), recommends Petitioner's request be partially granted. The AO noted, in part, that should BCNR grant an exception to policy based upon the removal of the adverse FITREP that Petitioner should be considered for promotion by the Enlisted Remedial Selection Board (ERSB) for the FY 2016 through FY 2019 Gunnery Sergeant Selection Boards. The AO further states that only then, if he receives a majority vote by the ERSB members to be selected, can MMPR-2 determine if he would have been eligible for promotion consideration by the FY 2021 Sergeant Major through Master Sergeant Selection Board or subsequent boards.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded the Petitioner's request warrants partial favorable action. Specifically, the Board determined Petitioner should be considered by the FY 2016 through FY 2019 GySgt ERSB. While the Board noted that all requests for ERSB's must be received no later than three years after the date the contested board results are made public, the Board concluded that an exception to policy was appropriate in Petitioner's case based on the action taken by this Board, in enclosure (3), to remove the aforementioned fitness report. Based on this finding, the Board also concluded Petitioner's date of rank shall remain unchanged pending promotion consideration by the ERSB(s). Since it is unclear at this point whether Petitioner was eligible for consideration by the FY 2021 Sergeant Major through Master Sergeant Selection Boards, the Board concluded the issue of whether Petitioner was eligible for promotion to E-8 is not yet ripe for consideration by this Board.

RECOMMENDATION

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

Petitioner be considered by the FY 2016 through FY 2019 GySgt ERSB, and if selected, his DOR and effective date in the grade of GySgt/E-7 shall be adjusted to the date he would have received had he originally been selected by the respective ERSB Board.

Furthermore, the Board directs that if the Petitioner is selected to GySgt prior to his current FY 2020 selection, he be given further consideration to determine if he would be eligible for any Sergeant Major through Master Sergeant Selection Boards.

That no further relief be granted.

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 Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/18/2022

[REDACTED]