



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

█  
Docket No: 6250-22

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) Title 10 U.S.C. § 1552  
(b) MCO 1900.16 w/CH 2  
(c) MCO P1400.32D w/CH2

Encl: (1) DD Form 149 w/attachments  
(2) NAVMC 118(11) Administrative Remarks of 27 Dec 18  
(3) █ ltr 1600 █ of 4 Jan 19  
(4) Fitness report for the reporting period 16 Jun 18 to 31 Dec 18  
(5) HQMC ltr 1610 MMRP-30 of 2 Nov 21  
(6) CMC ltr 1610 MMRP-13/PERB of 15 Feb 22  
(7) CMC ltr 1420/2 MMRP-2 undated

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Petitioner's naval record be corrected by back dating his promotion to Gunnery Sergeant (GySgt/E-7) effective during the fiscal year (FY) 2019 Marine Corps E-7 promotion selection board (PSB). Petitioner also requested to remove his 27 December 2018 Administrative Remarks (page 11) 6105 entry and associated rebuttal statement.

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, 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 14 December 2018, a Preliminary Inquiry (PI) convened to investigate the circumstances surrounding a vehicle accident involving the Petitioner that occurred on

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28 October 2018. The PI found that the initial statement provided by Petitioner, on 29 October 2018, did not match the statement he gave to the [REDACTED] on 7 November 2018. The PI also found that the verbal and written statements that Petitioner initially gave varied significantly from the statement Petitioner gave to the [REDACTED]

c. On 27 December 2018, pursuant to reference (b), Petitioner was issued a page 11 entry counseling him for violating Article 134 (fleeing the scene of an accident) and Article 107 (false official statements), Uniform Code of Military Justice (UCMJ). Specifically, on 28 October 2018 at approximately 0225 Petitioner was involved in an accident with another vehicle on Interstate [REDACTED] in which he was the driver of the vehicle. Without exchanging insurance information or notifying [REDACTED], Petitioner and his passenger swapped seats, and he departed the scene of the accident as a passenger. The driver of the other vehicle was escorted to emergency services at a local hospital. In the days following the accident, Petitioner made statements to both his Platoon Commander, and Company First Sergeant in which he claimed to be driving when leaving the scene of the accident. These statements directly contradict his statement to [REDACTED] officer, in which he admitted to leaving the scene as a passenger, not the driver. Petitioner acknowledged the page 11 entry and submitted a statement. In his statement, Petitioner indicated that he never intended to submit any false or deceptive information to his chain of command or anyone, he and his passenger spoke to the driver of the other vehicle and agreed to meet off the freeway, expecting her to follow, they pulled off the shoulder towards the nearest exit but the driver of the other vehicle did not follow. See enclosures (2) and (3).

d. On 8 February 2019, Petitioner was issued an adverse fitness report for the reporting period 16 June 2018 to 31 December 2018. Petitioner's fitness report was marked adverse due to derogatory material for being issued enclosure (2). Petitioner's fitness report was also marked adverse for 'Setting the Example' and 'Judgement'. See enclosure (4).

e. On 10 September 2021, Petitioner submitted an application to the Marine Corps Performance Evaluation Review Board (PERB) requesting to remove enclosure (4).

f. In an advisory opinion (AO) to the PERB, MMRP-30 recommended granting relief because the fitness report was rendered adverse prior to adjudication of pending civil/criminal matters. The AO concluded that Petitioner's chain of command processed the contested fitness report for conduct-based adversity while civil/criminal actions were pending. See enclosure (5).

g. On 15 February 2022, the PERB concurred with the AO and granted Petitioner relief by removing enclosure (4) from his record. See enclosure (6).

h. In correspondence from Headquarters Marine Corps (MMPR-2), Petitioner was denied consideration by an Enlisted Remedial Selection Board (ERSB). MMRP-2 noted that Petitioner was selected to the rank of GySgt by the FY 2022 selection board, thus according to reference (c), a Marine cannot receive remedial consideration for a rank currently held or to which selected. See enclosure (7).

i. Petitioner contends that the PERB removed his adverse fitness report for the reporting period 16 June 2018 to 31 December 2018. Petitioner also contends that his page 11 entry is

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procedurally incorrect. According to reference (b), the date of the page 11 entry is the date that the Marine was counseled by the commanding officer (CO). Petitioner claims that he was counseled by the company commander with the first sergeant present and he entered the date on the page 11 entry.

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an error warranting partial corrective action.

The Board noted that the PERB corrected Petitioner's record by removing enclosure (4) from his record. The Board also noted that Petitioner was selected for promotion to GySgt by the FY 2022 E-7 PSB. Concerning Petitioner's request for by the FY 2019 ERSB, the Board determined that Petitioner failed to demonstrate due diligence to be considered by the FY 2019 PSB. In this regard, the Board noted that Petitioner did not submit an application to correct his record until 14 September 2020, prior to the convening of the FY 2021 PSB. The Board also noted that according to reference (c), due diligence requires that a Marine identify errors, discrepancies, or an injustice in his/her record in a timely manner and initiate appropriate corrective action. If the error is discovered and corrected following the adjournment of the board, the Marine must address the reason why the error could not reasonably have been discovered and corrected prior to the convening date of the board. When a Marine fails to demonstrate due diligence in correcting errors, injustices in the record, or in the submission of a request for remedial promotion consideration, will not normally constitute a basis for granting remedial consideration for promotion. The Board found no evidence that Petitioner exercised due diligence to correct his record prior to the convening of the FY 2019 PSB.

Despite the determination that Petitioner failed to exercise due diligence prior to the FY 2019 PSB, the Board concluded the interests of justice merit his consideration before the FY 2019 ERSB as an exception to policy. In making this finding, the Board took into consideration the PERB action in his case. Accordingly, the Board determined the presence of his adverse fitness report was a material error, as an exception to policy, and Petitioner should be granted consideration for promotion to E-7 by the FY 2019 ERSB. If not selected by the FY 2019 ERSB, the Board directed the convening of the FY 2020 ERSB, and a FY 2021 ERSC if required, to consider his record.

Concerning Petitioner's 27 December 2018 page 11 entry, the Board substantially concurred with the previous Board's determination that Petitioner's page 11 entry is valid and should be retained as filed. In this regard, Petitioner's page 11 entry was written and issued according to reference (b). The Board found no evidence that Petitioner was no counseled by his CO and he provided none. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting the removal of the page 11 entry or associated rebuttal.

#### RECOMMENDATION

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

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Petitioner's naval record be corrected by granting him consideration for promotion to GySgt by the FY 2019 E-7 ERSB. Should Petitioner not be selected by the FY 2019 ERSB, the Board directs the convening of a FY 2020 E-7 ERSB, and FY 2021 E-7 ERSB, if required, to consider his record.

No other changes to Petitioner's record.

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

9/27/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]