



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

██████████
Docket No: 6510-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

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

Encl: (1) DD Form 149 w/enclosures
(2) NAVMC 10132 of 18 Oct 19
(3) Fitness report for the reporting period 31 May 19 to 18 Oct 19
(4) MARADMIN 274/20
(5) MARADMIN 084/21
(6) CO. ██████████ Marine Regiment ltr 5800 CO of 2 Jun 21
(7) Law Office of ██████████ memo of 3 Jun 21
(8) State of ██████████ Certificate of 6 Apr 21
(9) CMC ltr 1070 MMRP-13/PERB of 30 Mar 22
(10) CMC ltr 1420/2 MMRP-2 of 11 Jun 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 to be granted a fiscal year (FY) 2020 and 2021 Enlisted Remedial Selection Board (ERSB) for promotion consideration to Gunnery Sergeant (GySgt/E-7).

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 4 October 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 the naval records, 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 17 August 2019, Petitioner was arrested for operating a vehicle under the influence of an intoxicant.

c. On 18 October 2019, Petitioner received non-judicial punishment (NJP) for violating Article 92, Uniform Code of Military Justice (UCMJ) for operating a vehicle while under the

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influence of an intoxicant. Petitioner was found guilty and awarded forfeitures of pay. Petitioner acknowledged his Article 31, UCMJ Rights and elected not to appeal the Commanding Officer's (CO's) finding of guilt. Enclosure (2).

d. Petitioner was issued an adverse fitness report for the reporting period 31 May 2019 to 18 October 2019 for receiving disciplinary action. Petitioner acknowledged the adverse nature of the fitness report and indicated that he has no statement to make. Enclosure (3).

e. On 7 July 2020, the FY 2020 GySgt promotion selection board (PSB) convened and Petitioner was not selected for promotion. Enclosure (4).

f. On 20 April 2021, the FY 2021 GySgt PSB convened and Petitioner was not selected for promotion. Enclosure (5).

g. On 2 June 2021, the CO, [REDACTED] Marine Regiment, set aside Petitioner's NJP. As justification for setting aside the NJP, the CO noted that Petitioner was "cleared of all charges regarding the reason he was punished." Enclosure (6).

h. In correspondence from Petitioner's lawyer, dated 3 June 2021, Petitioner's lawyer noted that the [REDACTED] District Court dismissed the case against Petitioner on 16 March 2021. The Court dismissed the case with prejudice because the State failed to bring forth the required evidence, after a year and a half of delay in the cases. Enclosures (7) and (8).

i. On 13 June 2021, Petitioner submitted a request to the Performance Evaluation Review Board (PERB) to remove his adverse fitness report. On 30 March 2022, the PERB approved his request and removed enclosure (2). Enclosure (9).

j. On 24 May 2022, Petitioner submitted correspondence to the Marine Corps Enlisted Promotions Branch (MMPR-2) requesting remedial promotion consideration citing the wrongful receipt of NJP and subsequent adverse fitness report. While awaiting a response from MMPR-2, the FY 2022 GySgt PSB convened and Petitioner was selected for promotion to GySgt. Petitioner was promoted to GySgt on 1 August 2022. Enclosure (10).

k. On 11 July 2022, Petitioner's request for remedial consideration for promotion was denied by MMPR-2. MMPR-2 noted that according to reference (b), Petitioner cannot receive remedial consideration for a rank currently held or to which selected. Enclosure (11).

l. In his application, Petitioner contends that he wrongfully received NJP and was issued an adverse fitness report before any steps were taken by the civilian court system. Petitioner asserts that because he was not cleared of the charges until 16 March 2021 and because the adverse material was still present in his record, he was not selected for promotion to GySgt during FY 2020 and 2021. Petitioner claims that he has taken every reasonable step to ensure the accuracy and completeness of his records in a timely manner since the derogatory material was removed.

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an injustice warranting relief.

In this regard, the Board noted the limitations set forth in reference (b) for remedial promotion consideration. The Board, however, determined that an exception to policy is warranted by granting Petitioner remedial promotion consideration during the FY 2020 and 2021 GySgt PSBs. The Board opined that because Petitioner was awaiting action by the civil court, he was unable to correct the adverse material in his record prior to the convening date of the selection boards. In light of this, the Board also determined that Petitioner sufficiently demonstrated due diligence by taking timely steps to correct his record once his case was dismissed.

RECOMMENDATION

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

Petitioner's record be corrected by convening a FY 2020 and 2021 Enlisted Remedial Selection Board for promotion to GySgt.

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.

11/6/2022

