



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

[REDACTED]  
Docket No. 7697-16  
AUG 10 2017

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

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

Ref: (a) Title 10 U.S.C. §1552

Encl: (1) DD Form 149 w/attachments  
(2) HQMC memo 1400 MMRP-2 of 4 Jan 17  
(3) [REDACTED] E-mail of 29 Mar 11  
(4) DD Form 149 of 29 Oct 15  
(5) HQMC memo 1610 MMRP-13/PERB of 26 Jan 16  
(6) Requests Printout of 3 Mar 17

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to authorize remedial consideration for promotion by the FY 2012 Gunnery Sergeant Selection Board.

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 May 2017 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, 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. Petitioner submitted a request for correction of his military record to this Board in March 2011, to remove derogatory material. Petitioner's request was approved by this Board, Docket No. 3498-11. However, the Fitness Report (FITREP) also associated with the aforementioned derogatory material was not removed. See enclosure (4).

c. Petitioner submitted a request to remove the FITREP covering the period of 2 July 2007 to 3 December 2007 to the Performance Evaluation Review Board (PERB) in October 2015. The Petitioner's request was approved on 26 January 2016. See enclosures (4) and (5).

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[REDACTED]

d. Petitioner submitted a request to this Board in August 2016 to be considered for remedial consideration from the FY 2012 Gunnery Sergeant Selection Board, due to the fact that his record had been corrected to remove the 2007 FITREP. See enclosure (1).

e. In correspondence attached as enclosure (2), the office having cognizance over the subject matter addressed in Petitioner's application has stated that the request should be denied. The PERB concluded that the Petitioner did not show due diligence in having the contested FITREP removed prior to the convening of the FY 2012 Gunnery Sergeant Selection Board, as required by paragraph 3602.3 of MCO P1400.32D. Furthermore, the PERB stated that the Petitioner was selected for promotion from the FY 2013 Gunnery Sergeant Selection Board, and the Petitioner was subsequently selected for promotion to Master Sergeant from the FY 2017 Sergeant Major through Master Sergeant Selection Board.

f. The Petitioner submitted a rebuttal to the PERB's advisory opinion, stating that by submitting his request for removal of derogatory material in March 2011, he showed due diligence in having his record corrected; however, he states that at the time of the record correction, he was unaware that the 2007 FITREP was not included in the material approved for removal. Additionally, the Petitioner provided screenshots of completed requests, showing that he was making contact with his Career Counselor's Office seeking assistance in correcting his record. See enclosures (3) and (6).

4. Petitioner also requested that if selected by the FY12 Gunnery Sergeant, that he be granted remedial consideration by the FY16 First Sergeant and FY17 Master Sergeant Boards.

## CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the Board finds the existence of an injustice warranting corrective action. The Board was convinced by the Petitioner's rebuttal to the PERB's advisory opinion that the Petitioner may have only sought correction of his record by removing the 2007 FITREP in October of 2015, but he did request to have ALL derogatory material removed in 2011. The Board additionally found that the fact the PERB removed the associated FITREP from 2007 in 2015 after having approved removal of all derogatory material in 2011, convinces them that the contested FITREP should have been removed with the original request in 2011. Since the Petitioner's request from 2011 was prior to the convening of the FY 2012 Gunnery Sergeant Selection Board, the Petitioner should be authorized remedial consideration for promotion.

The Board was not willing to grant relief for Petitioner's requests for remedial consideration by the FY16 First Sergeant and FY17 Master Sergeant Boards. The Board determined that such action would be premature, given the fact that it is not sure he would have been selected for promoted to Gunnery Sergeant by the FY12 Selection Board had his record not contained derogatory material.

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[REDACTED]

RECOMMENDATION:

Petitioner's naval record be corrected, where appropriate, to show that:

Petitioner is authorized remedial consideration for promotion by the FY12 Gunnery Sergeant Selection Board.

No further relief be granted.

5. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.

[REDACTED]

Recorder

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

[REDACTED]

Executive Director

Reviewed and approved/~~disapproved~~

[REDACTED]

23 Aug 2017