



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

[REDACTED]
Docket No: 483-17
JAN 04 2018

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

Encl: (1) DD Form 149
(2) Subject's naval record (excerpt)

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted Marine, filed enclosure (1) with this Board requesting that the Administrative Remarks (Page 11) counseling entry be removed from his official military personnel file (OMPF) and to back date his Master Sergeant (MSgt)/E-8 date of rank (DOR) and effective date to the date he would have received had he not failed selection.
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 December 2017 and, pursuant to its regulations, determined that the partial 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 was issued a Page 11 entry, dated 22 June 2007, for suspicion of driving while intoxicated. The entry was not signed by his Commanding Officer (CO) and Petitioner did not choose to submit a rebuttal statement.
 - c. Petitioner failed selection by the FY12 and FY13 Master Sergeant Promotion Selection Boards. He was selected for promotion by the FY14 Master Sergeant Board and promoted with a DOR 1 January 2014.
 - d. Petitioner contended that the Page 11 entry was not signed by his CO, and was not intended to be entered into his OMPF. The entry in his OMPF went unnoticed because it was filed only under the "contract" section of his OMPF. Once noticed, he obtained an advocacy

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letter from the issuing CO and submitted it to the FY14 Promotion board, and was subsequently selected. He argued that had the Page 11 entry not been in his OMPF, he would not have failed selection in FY12. Petitioner provided the CO's advocacy letter with his application, and in the letter, the issuing CO stated that he did not sign the Page 11 entry because he did not intend for it to be entered into Petitioner's OMPF, but wrote it pending the toxicology report. When he received the toxicology report, it indicated that Petitioner was within legal limits, and all civil charges were dropped. His CO further stated that the Page 11 entry was erroneously submitted to Headquarters, Marine Corps with Petitioner's reenlistment package and subsequently entered into his OMPF.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board substantially concurred with Petitioner's contentions and supporting documentation, and determined that partial relief is warranted. In this connection, the Board agreed that the Page 11 entry was erroneously included in Petitioner's OMPF and that it shall be removed.

The Board noted that Petitioner's request for correction to his was not timely, that it was Petitioner's responsibility to ensure his OMPF was complete and accurate prior to the convening of the Promotion Boards, and that Petitioner has already been selected and promoted to Master Sergeant. However, the Board concluded that, in the interest of fairness, HQMC (MMPR-2) shall invoke an exception to policy and convene an FY12 Master Sergeant ERSB on Petitioner's behalf.

The Board was not willing to grant Petitioner's request to back date his DOR because it was not convinced that the presence of the Page 11 entry in Petitioner's OMPF was the sole cause of his failures of selection, and determined that consideration by an ERSB, after his record is corrected, is the fair way to determine his competitiveness for promotion amongst his FY12 peers.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing from his OMPF the Page 11 entry dated 22 June 2007. See enclosure (2).

Petitioner be considered by an FY12 Master Sergeant ERSB, and if selected, his DOR and effective date in the grade of Master Sergeant shall be adjusted to the date he would have received had he originally been selected by the FY12 Board.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

No further relief be granted.

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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.

[REDACTED]
Recorder

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.

[REDACTED]
Executive Director