



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

██████████
Docket No. 4855-24
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
(c) MARADMIN 321/22, FY22 Approved Selections to GySgt
(d) MARADMIN 311/23, FY23 Approved Selections to GySgt

Encl: (1) DD Form 149 w/enclosures
(2) NAVMC 118(11) Administrative Remarks counseling entry of 11 Apr 22
(3) Petitioner Rebuttal
(4) Medical Officer, ██████ ltr 1000 MO of ██████
(5) CO, ██████ Memo 5800 ██████ ██████
(6) BCNR ltr ██████ Docket No. 1116-24 of 12 Mar 24
(7) CMC ltr 1400/3 MMPB-11 of ██████

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 remedial promotion consideration for the rank of Gunnery Sergeant (GySgt) by an Enlisted Remedial Selection Board (ERSB) for Fiscal Year (FY) 2022 GySgt Promotion Selection Board.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 9 July 2024 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. In addition, the Board considered enclosure (7), an advisory opinion from Headquarters, U.S. Marine Corps (MMPB-13).

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.

b. On 11 April 2022, Petitioner received a counseling entry for Violation of Article 112a, in that on or around 3 March 2022, wrongfully used a controlled substance. Petitioner also received a promotion restriction counseling entry for 18 months due to the use of illegal drugs

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pursuant with reference (b). In his rebuttal statement, Petitioner explained that he had been previously diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) by a medical provider in March of 2019 and had stopped taking his medication. Further, he explains that he noticed his symptoms began to worsen early January of 2022 and took the remaining prescription while also requesting to be seen by his Primary Care Manager for reevaluation. On 27 January 2022, during a command urinalysis, Petitioner tested positive. Enclosures (2) and (3).

c. On 13 April 2022, the Medical Officer for the [REDACTED] ([REDACTED]) wrote a letter to on behalf of the Petitioner to the commanding officer (CO) stating that the medication taken was appropriate for Petitioner's diagnosed medical condition and [although] there was a lapse in the prescription, the improper use did not appear to be malicious or abusive. He also noted that Petitioner is under the care of appropriate medical authority and the need for this medication has been confirmed. Enclosure (4).

d. On 26 April 2022, the FY 2022 GySgt Promotion Selection Board convened. Pursuant to reference (c), the FY 2022 GySgt Promotion Selection Board (PSB) adjourned. Petitioner was not selected.

e. On 28 September 2022, the CO recommended removal of the counseling entry at enclosure (2) along with administrative separation documents due to administrative error. Enclosure (5).

f. A previous Board granted Petitioner's request to remove the counseling entry based upon the Medical Officer's explanation concerning the use of medication as well as the CO's favorable endorsement recommendation removal of the counseling entry. See Enclosure (6).

g. On 13 May 2024, Headquarters Marine Corps, Enlisted Promotion Section approved Petitioner's request for the FY 2023 ERSB for the rank of GySgt pursuant with references (b) and (d), however, they denied his request for consideration by the FY 2022 promotion selection board pursuant with reference (b) stating that Petitioner did not exercise due diligence to have the counseling entry removed prior to the convening of the FY 2022 GySgt Promotion Selection Board. Enclosure (7).

h. Petitioner requests consideration by the FY 2022 GySgt Promotion Selection Board based upon the previous Board's (Docket No. 1116-24) decision to grant his removal of the counseling entry and associated rebuttal at enclosures (2) and (3).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concluded the Petitioner's request warrants favorable action. In this regard, the Board noted the requirements for due diligence pursuant to reference (e) and determined Petitioner exercised it. Specifically, the Board noted the counseling entry was issued on 11 April 2022 merely fifteen days prior to the FY 2022 GySgt Selection Board. Further, the Board gave substantial consideration to the advocacy letter written two days after the issuance of the counseling entry by the Medical

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Officer as well as the CO's favorable endorsement to for removal of the counseling entry. Thus, Board determined Petitioner took every reasonable step to correct his record immediately following issuance of the counseling record and that the material error in his record may have negatively influenced the promotion selection board's decision.

RECOMMENDATION

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

Petitioner be granted remedial promotion consideration by the FY 2022 GySgt Promotion Selection Board, and if selected, his date of rank 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 PSB.

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.

7/15/2024

