



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

JSR

Docket No: 10290-08
12 March 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 12 Aug 08 w/attachment
(2) HQMC MMPR-2 memo dtd 3 Dec 08
w/refs (b)-(d)
(3) Subject's ltr dtd 5 Mar 09
(4) HQMC MMPR e-mail dtd 12 Mar 09 w/attachments
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected to show he was promoted to gunnery sergeant, by virtue of his selection by the Fiscal Year (FY) 2007 Reserve Gunnery Sergeant Selection Board, and remove the Commandant of the Marine Corps (CMC) letter dated 14 March 2007, Subject: "Administrative Deletion from the FY 2007 Reserve Staff Noncommissioned Officer Selection Board (SMCR) [Selected Marine Corps Reserve]," a copy of which is at Tab A. He does not ask that the promotion be made retroactive, only that it be upheld.

2. The Board, consisting of Ms. LeBlanc and Wilcher and Mr. Wilson, reviewed Petitioner's allegations of error and injustice on 12 March 2009, 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Petitioner was administratively deleted from the FY 2007 Reserve Gunnery Sergeant Selection List because his enlistment contract had lapsed, before the selection board adjourned, as a result of his failure to take and pass a physical fitness test (PFT). He was discharged from the Marine Corps Reserve on 5 February 2007 and reenlisted on 18 March 2008. He missed consideration by the FY 2008 Reserve Gunnery Sergeant Selection Board because of his break in service; and he was removed from consideration by the FY 2009 promotion board because he executed a lateral move while the board was in session. He contends that when he was ready to take the PFT, his unit was not prepared to conduct it; and that when they were prepared to conduct it, his circumstances did not allow him to take it. He says he has since taken it twice, each time achieving a first class score. The front page of his fitness report for 18 March to 25 July 2008, a copy of which is at Tab B, verifies he had a first class PFT score of 205.

d. In enclosure (2), the Headquarters Marine Corps Enlisted Promotion Section commented to the effect Petitioner's request should be denied, as he "chose not to take his PFT making him unqualified for extension or reenlistment."

e. Enclosure (3) is Petitioner's reply to enclosure (2), detailing the circumstances that prevented him from taking the PFT.

f. Enclosure (4) shows that Petitioner would have been promoted to gunnery sergeant with a date of rank and effective date of 1 October 2007, had he not been deleted from the FY 2007 Reserve Gunnery Sergeant Selection List.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosure (2), and in light of Petitioner's representations and enclosure (4), the Board finds an injustice warranting correction of Petitioner's record to show he was not deleted from the FY 2007 Reserve Gunnery Sergeant Selection List, but was promoted to gunnery sergeant with a date of rank and effective date of 1 October 2007; remove the CMC letter

dated 14 March 2007; and show Petitioner had continuous service from 6 February 2007 to 17 March 2008. In this connection, the Board agrees with Petitioner that it was an injustice he did not take the required PFT, which resulted in a lapse of his contract and his deletion from the selection list. Noting the first class PFT score reflected at Tab B, the Board considers it probable Petitioner would have passed the PFT, had he taken it. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show he was not deleted from the FY 2007 Reserve Gunnery Sergeant Selection List, but was promoted to gunnery sergeant with a date of rank and effective date of 1 October 2007.

b. That his record be corrected further by removing the CMC letter dated 14 March 2007, Subject: "Administrative Deletion from the FY 2007 Reserve Staff Noncommissioned Officer Selection Board (SMCR)" and any correspondence reflecting his removal from consideration by the FY 2009 Reserve Gunnery Sergeant Selection Board.

c. That his record be corrected further to show he was not discharged on 5 February 2007, but extended his enlistment to 17 March 2008, when he was discharged; and that he immediately reenlisted on 18 March 2008, without any break in service.

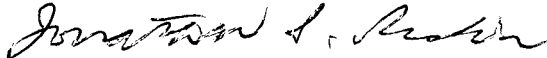
d. That his anniversary date and pay entry base date be adjusted accordingly.

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

f. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval 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.

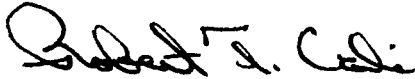
ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

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


W. DEAN PFEIFFER

Reviewed and approved:


3-23-08