



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

JSR
Docket No: 413-09
29 May 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 undtd w/attachment
(2) HQMC MMER/PERB memo dtd 17 Jun 08
w/fitrepts for 1 Apr 05 to 31 Mar 06 and
1 Apr to 25 May 06
(3) HQMC MMPR-2 memos dtd 17 Feb and 29 Mar 09
(4) Subject's ltr dtd 22 May 09
(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 by adjusting his staff sergeant date of rank and effective date to reflect selection by the Fiscal Year (FY) 2006 Staff Sergeant Selection Board, rather than the FY 2008 Staff Sergeant Selection Board.

2. The Board, consisting of Ms. Willis and Messrs. Bowen and Ivins, reviewed Petitioner's allegations of error and injustice on 29 May 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. In Petitioner's prior case, docket number 6325-08, the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) directed removing the fitness reports for 1 April 2005 to 31 March 2006 and 1 April to 25 May 2006. Copies of the PERB memorandum directing that action and the two removed reports are at enclosure (2). Petitioner's application in that case was dated 24 April 2008, after he had failed of selection by the FY 2006 and 2007 Staff Sergeant Selection Boards, convened on 18 July 2006 and 17 July 2007, respectively. He was selected by the FY 2008 Staff Sergeant Selection Board, the first board to consider him without the contested fitness reports, and promoted with a date of rank and effective date of 1 October 2008.

d. In the advisory opinions at enclosure (3), MMPR-2, the HQMC Enlisted Promotion Section, recommends that relief be denied, as Petitioner did not exercise due diligence, and even his corrected record was not competitive. In this regard, MMPR-2 notes that Petitioner's record contains uncontested nonjudicial punishments dated 13 July 1993 and 23 March 1994 (copy at Tab A) and documentation of his relief from recruiting duty for the good of the service (copy at Tab B), whose removal was denied in his previous case. The relief documentation was not available to the FY 2006 promotion board, as it was not filed until 11 August 2006, but the later removed fitness report for 1 April to 25 May 2006, which gave Petitioner's duty assignment as "Relieved recruiter," was in his record for that promotion board (filed 2 August 2006, before the promotion board adjourned on 21 September 2006).

e. In enclosure (4), Petitioner's reply to the advisory opinions, he contends that he did exercise due diligence and that he would have been competitive with a corrected record. He feels he would have been competitive for the FY 2006 board because of having served as a platoon sergeant, a staff sergeant billet; and he would have been competitive for the FY 2007 board because of having served as a platoon sergeant in a combat zone.

f. Had Petitioner been promoted pursuant to selection by the FY 2006 Staff Sergeant Selection Board, he would have been assigned a date of rank and effective date of 1 November 2006.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosure (3), the Board finds an injustice

warranting the requested relief. The Board accepts Petitioner's explanation for not having applied sooner for correction of his fitness report record. Further, his having been selected by the first promotion board to consider his corrected record establishes a prima facie case for backdating. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:


a. That Petitioner's naval record be corrected by adjusting his staff sergeant date of rank and effective date from 1 October 2008 to 1 November 2006.

b. That 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 be added to the record in the future.

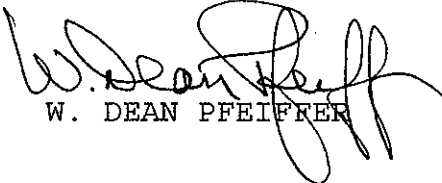
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

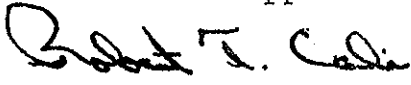
ROBERT D. ZSALMAN
Recorder


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:


6-17-08