



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

JSR  
NR7775-13  
14 March 2014

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

Subj: GYSGT [REDACTED]  
REVIEW OF NAVAL RECORD

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

- Encl:
- (1) DD Form 149 dtd 24 Jul 13 w/attachments
  - (2) UPB entry for NJP of 3 Nov 06
  - (3) CO HQ and SptBn 5800 LEG memo dtd 12 May 08
  - (4) FY 2006 USMC SSgt Sel Bd statistics  
(from HQMC website)
  - (5) HQMC MMER/PERB memo undtd
  - (6) Copy of Subject's fitrept for 1 Apr to 2 Nov 06
  - (7) Documentation relating to NJP of 3 Nov 06,  
including RFC
  - (8) HQMC MMPR-2 memo dtd 29 Jan 14
  - (9) Subject's ltr dtd 26 Feb 14 w/enclosures
  - (10) HQMC MMPR-2 e-mail dtd 13 Mar 14
  - (11) Subject's naval record
  - (12) HQMC MMPR-2 e-mail dtd 14 Mar 14

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 he be afforded reconsideration for promotion to staff sergeant (pay grade E-6) for Fiscal Year (FY) 2006 and 2007. He also requested, if selected to staff sergeant, that his promotion to gunnery sergeant (pay grade E-7) be backdated. In accordance with Marine Corps Order P1400.32D, paragraph 3602.4.n, since he has been promoted to staff sergeant, his application has been treated as a request that his promotion to staff sergeant be backdated to reflect an FY 2006 or 2007 selection and, if this is approved, that his promotion to gunnery sergeant be backdated accordingly.

2. The Board, consisting of Ms. Lapinski and Messrs. Gorenflo and Hicks, reviewed Petitioner's allegations of error and injustice on 13 March 2014, 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 enclosures (1) through (11), 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 an in zone eligible for the FY 2005 Staff Sergeant Selection Board, convened on 19 July 2005, but he was not considered by either the FY 2005 or the FY 2006 promotion board, convened on 18 July 2006, because he had a draw case code of RE3-O (refused orders/refused to extend). He was likewise not considered by the FY 2007 promotion board, convened on 17 July 2007, because he had been awarded a nonjudicial punishment (NJP) on 3 November 2006, at which he was reduced from sergeant (pay grade E-5) to corporal (pay grade E-4) (copy of Unit Punishment Book (UPB) entry at enclosure (2)). When the RE-3O code was removed, Petitioner requested remedial consideration for FY 2005 and 2006, but Headquarters Marine Corps (HQMC) denied this request on the basis that Petitioner had not exercised due diligence. By his then commanding officer's action of 12 May 2008 (copy at enclosure (3)), his NJP was set aside, and he was retroactively reinstated to sergeant. He consequently requested and was granted remedial consideration for FY 2007. His enlisted remedial selection board (ERSB), convened on 14 August 2008, did not select him. The regular FY 2008 promotion board, convened on 15 July 2008, selected him. He was promoted to staff sergeant with a date of rank and effective date of 1 October 2008. He was then selected by the FY 2012 Gunnery Sergeant Selection Board, convened on 17 April 2012, and he was promoted to gunnery sergeant with a date of rank and effective date of 1 December 2012.

d. Enclosure (4) shows that the in zone percentage selected for the FY 2006 Staff Sergeant Selection Board was 62.2.

e. Enclosure (5) reflects that the HQMC Performance Evaluation Review Board directed removing Petitioner's fitness report for 1 April to 2 November 2006, which documented the later set aside NJP. Enclosure (6) is a copy of the fitness report.

f. Enclosure (7) is a copy of documentation that was removed from Petitioner's Official Military Personnel File (OMPF) pursuant to action of 16 April 2013 by this Board in his previous case, docket number NR1185-13 (copy of Report of Proceedings in enclosure (1)). That documentation comprised correspondence pertaining to the set aside NJP, including his relief for cause (RFC) from recruiting duty by reason of the NJP.

g. Petitioner received a service record page 11 counseling entry on 5 October 2006 for reckless operation of a motor vehicle with a blood alcohol level of .147. By his then commanding officer's action of 16 January 2013, this page 11 entry was removed from his OMPF. Copies of the page 11 entry and the commanding officer's action are in enclosure (1).

h. At the convening of the FY 2006 Staff Sergeant Selection Board, which Petitioner missed, his OMPF did not yet contain any of the derogatory material that was ultimately removed. On the convening date of the regular FY 2007 board, which Petitioner also missed, his OMPF included the UPB entry and the page 11 entry. When he was considered and not selected by the ERSB for FY 2007, and also when he was considered and selected by the FY 2008 board, his OMPF included the page 11 entry and the RFC documentation.

i. Enclosure (8) is the advisory opinion from HQMC MMPR-2, the Enlisted Promotion Section, recommending that Petitioner's request be denied, citing the competitive nature of the selection board process and the due diligence and timeliness requirements for remedial consideration for promotion. MMPR-2 advised that the in zone selection percentage for the FY 2007 Staff Sergeant Selection Board was 56.00, and that had Petitioner been promoted pursuant to selection by that board, he would have been promoted with a date of rank and effective date of 1 December 2007. MMPR-2 further advised that with an FY 2007 promotion to staff sergeant, he would have been eligible below zone for the FY 2010 Gunnery Sergeant Selection Board; and that if he were promoted to gunnery sergeant pursuant to selection by that board, his date of rank and effective date would have been 1 March 2011.

j. Enclosure (9) is Petitioner's reply to the advisory opinion, in which he maintained that he had exercised due diligence in an effort to have the RE-3O code removed.

k. In enclosure (10), MMPR-2 advised that had Petitioner been considered by the FY 2006 Staff Sergeant Selection Board, he would have been treated, in accordance with Marine Corps Order P1400.32D, as in zone, because he had not been considered by the FY 2005 board for which he would have been in zone by virtue of his date of rank. That office further advised that had Petitioner been promoted to staff sergeant pursuant to selection by the FY 2006 board, he would have received a date of rank and effective date of 1 February 2007. Finally, that office advised that had Petitioner been promoted to staff sergeant from the FY 2006 board, he would have been eligible for in zone consideration by the FY 2010 Gunnery Sergeant Selection Board.

l. Enclosure (11) is Petitioner's naval record.

4. After the Board had considered Petitioner's case, MMPR-2 provided enclosure (12), which advised that had Petitioner been promoted to staff sergeant on the basis of an FY 2006 selection, and had he been promoted to gunnery sergeant on the basis of an FY 2010 selection, his gunnery sergeant date of rank and effective date would have been 1 January 2011.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (8), the Board finds an injustice warranting correction of Petitioner's naval record by adjusting his staff sergeant date of rank and effective date to reflect selection by the FY 2006 Staff Sergeant Selection Board, and adjusting his gunnery sergeant date of rank and effective date to reflect selection by the FY 2010 Gunnery Sergeant Selection Board.

In this connection, the Board finds that Petitioner was denied consideration by the FY 2006 board as a result of a later removed draw case code. The Board further finds that had he been considered by that promotion board, as he should have been, he probably would have been selected. In this regard, the Board particularly notes that when that board convened, his record included none of the derogatory material that was eventually removed; that the applicable directive would have required that he be considered in an in zone status; and that the in zone selection percentage was 62.2, well over half.

In light of these findings and the information in enclosures (10) and (12) concerning the promotion dates Petitioner would have received, had he been promoted to staff sergeant pursuant to selection by the FY 2006 board, and had he been promoted to gunnery sergeant on the basis of an FY 2006 promotion to staff sergeant and selection in zone by the FY 2010 Gunnery Sergeant Selection Board, the Board recommends the following corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show his promotion to staff sergeant with a date of rank and effective date of 1 February 2007, rather than 1 October 2008, to reflect selection by the FY 2006 Staff Sergeant Selection Board, rather than FY 2008.

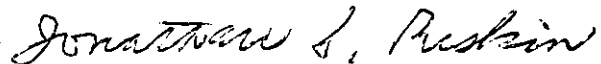
b. That his record be corrected further to show his promotion to gunnery sergeant with a date of rank and effective date of 1 January 2011, rather than 1 December 2012, to reflect selection by the FY 2010 Gunnery Sergeant Selection Board, rather than FY 2012; and that his seniority number be adjusted accordingly.

c. 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 or material be added to the record in the future.


d. That any material directed to be removed from Petitioner's naval record be returned to this 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.

5. 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  
Acting Recorder

  
JONATHAN S. RUSKIN  
Recorder

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

  
ROBERT D. ZSALMAN  
Acting Executive Director

Reviewed and approved:

 5/30/14

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