



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

█
Docket No: 2467-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER █
█ USMC, XXX-XX-█

Ref: (a) 10 U.S.C. § 1552
(b) USD Memo, "Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations," 25 July 2018

Encl: (1) DD Form 149 w/attachment
(2) Application for Enlistment
(3) █ █ █ █ Training Regiment CO Memo 101/RGM/gwj, subj: Presumption of fraudulent enlistment, case of [Petitioner], 21 Nov 67
(4) MCBCP 1900/3, Undesirable Discharge Notification
(5) Second Endorsement to Enclosure (3), subj: Report of Fraudulent Enlistment and Recommendation for Discharge by Reason of Misconduct; case of [Petitioner], 18 Dec 67
(6) DD Form 214
(7) NAVMC 118(3), Record of Service
(8) NAVSO 1900/5C, NDRB Report, Docket No. MC7-1142

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 that the reference to "misconduct" be removed from his narrative reason for separation.

2. The Board reviewed Petitioner's allegations of error or injustice on 28 April 2021 and, pursuant to its regulations, determined that no corrective action should be taken. As discussed below, I disagree with the Board's conclusion and recommend that relief be granted in the interests of justice. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies, to include reference (b).

3. The Board, having reviewed all of the facts of record pertaining to Petitioner's allegations of error or injustice, finds 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.

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b. Although enclosure (1) was not filed in a timely manner, it is in the interests of justice to waive the statute of limitations and consider Petitioner's application on its merits.

c. In May 1967, Petitioner completed an application for enlistment in the Marine Corps. He indicated on this application that he was married, but denied having any dependent children. He also acknowledged on this application that "any false statement detected subsequent to enlistment will be processed as a fraud against the government and may ultimately result in [his] discharge from the Marine Corps under other than honorable conditions." See enclosure (2).

d. Subsequent to his application for enlistment, Petitioner enlisted in the Marine Corps and began a period of active duty service on 31 May 1967. See enclosure (3).

e. On 17 November 1967, Petitioner was notified that he was being considered for an undesirable discharge under other than honorable (OTH) conditions for misconduct due to procurement of a fraudulent enlistment. Petitioner indicated that he fully understood the reason why he was subject to an undesirable discharge, and waived his right to have his case heard by an administrative discharge board. See enclosure (4).

f. By memorandum dated 21 November 1967, Petitioner's commander recommended that he be discharged from the naval service under honorable conditions for failing to indicate that he had three dependent children at the time of his enlistment. See enclosure (3).

g. By memorandum dated 18 December 1967, the separation authority directed Petitioner's discharge under honorable conditions for misconduct due to a fraudulent enlistment. See enclosure (5).

h. On 5 January 1968, Petitioner was discharged from the Marine Corps with a general (under honorable conditions) characterization of service. The reason stated for his separation on his DD Form 214 was "misconduct," along with the regulatory provision for fraudulent enlistment. See enclosure (6).

i. Petitioner's final conduct average was 4.4. See enclosure (7). At the time of his discharge, a final conduct average of 4.0 was required for an honorable characterization of service.

j. On 11 February 1977, the Navy Discharge Review Board (NDRB) denied Petitioner's request for an upgrade of his discharge. In his application to the NDRB, Petitioner asserted that he was separated from his wife at the time of his enlistment, and that his three dependent children were discovered when his wife applied for an allotment for which she was not entitled. See enclosure (8).

k. Petitioner asserts that although he had custody of all three of his children, his estranged wife applied for an allotment that she was not entitled to receive. Once the paperwork for this application went through, his training was placed on hold and he was later discharged because of her actions. Petitioner contends that he listed his children when he enlisted, although that is not reflected on his enlistment application. He also contends that he was never disciplined for

anything while in the Marine Corps, and he was a squad leader in boot camp. He claims to have lived a successful life since his discharge, but the word “misconduct” is still a blemish on his military record. He does not believe himself to have been guilty of “misconduct” in any sense of the word.

BOARD CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found insufficient evidence of any error or injustice warranting relief.

The Board found no error or injustice in Petitioner’s discharge for misconduct due to fraudulent enlistment. Petitioner clearly withheld the fact that he had dependent children at the time of his enlistment, as evidenced by his enlistment application. Petitioner’s contention that he listed his dependent children during his enlistment was not supported by the evidence in his record. Further, the Board was not persuaded by Petitioner’s assertion that he was separated based upon the unauthorized submission by his estranged spouse of an allotment request. This action may have revealed Petitioner’s fraudulent enlistment, but did not cause his discharge.

In addition to considering the specific circumstances of Petitioner’s discharge, the Board also considered the totality of the circumstances to determine whether relief is warranted in the interests of justice in accordance with reference (b). In this regard, the Board considered, among other factors, the fact that Petitioner had no other misconduct in his record and had favorable conduct ratings; Petitioner’s contention that he has lived a successful life since his discharge; Petitioner’s contention that he was not guilty of any misconduct; and the passage of time since Petitioner’s discharge. Even considering these potentially mitigating factors, the Board determined that relief was not warranted under the totality of the circumstances. Petitioner’s discharge was clearly and appropriately based upon misconduct, and the Board did not find the potentially mitigating circumstances to be so significant to warrant any changes to Petitioner’s discharge. Accordingly, the Board determined that Petitioner’s request does not merit relief given the totality of the circumstances.

BOARD RECOMMENDATION:

In view of the above, the Board recommends that no corrective action be taken on Petitioner’s naval record.

EXECUTIVE DIRECTOR’S CONCLUSION:

Upon careful review and consideration of all of the evidence of record, I respectfully disagree with the Board’s conclusion and recommend that relief be granted in the interests of justice. While I agree with the Board’s conclusion that Petitioner was properly discharged for fraudulent enlistment, I believe that relief is warranted under the totality of the circumstances. Specifically, reference (b) provides that the Board should consider “[c]hanges in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received,” when deciding whether to apply its equitable relief authority. By today’s standards, Petitioner’s narrative reason for separation would not be

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indicated as “misconduct.”¹ This fact, combined with Petitioner’s otherwise meritorious service and the significant passage of time since Petitioner’s discharge, convinces me that no useful purpose is served by continuing to stigmatize Petitioner’s Marine Corps service. Accordingly, I believe that relief is warranted in the interests of justice.

EXECUTIVE DIRECTOR’S RECOMMENDATION:

In view of the above, I recommend that the following corrective action be taken on Petitioner’s naval record in the interests of justice:

That Petitioner be issued a new DD Form 214 reflecting that his service was characterized as “Honorable,” and that the reason and authority for Petitioner’s separation was “Convenience of the Government (other good sufficient reason as determined by the Secretary of the Navy), Paragraph 13261.1f, Marine Corps Personnel Manual.” Petitioner’s reentry code should not be changed.

That Petitioner be issued an Honorable Discharge certificate.

That a copy of this report of proceedings be filed in 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 titled matter.

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

6/7/2021

[REDACTED]

Executive Director

¹ In accordance with Marine Corps Order 1900.16 Ch. 2 (MARCORSEPMAN), defective enlistments are a separate and distinct basis for separation from misconduct.

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

~~Board Recommendation Approved (Deny Relief)~~

Executive Director Recommendation Approved (Full Relief – Upgrade to Honorable; Change Narrative Reason for Separation)

7/14/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]