



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

█
Docket No. 5648-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER █
█ USMC

Ref: (a) 10 U.S.C. § 1552
(b) MCO P1900.16A, Marine Corps Separation Manual, 28 June 1972
(c) 10 U.S.C. § 502

Encl: (1) DD Form 149 with attachments
(2) DD Form 1966, Application for Enlistment – Armed Forces of the United States, 31 December 1976
(3) DD Form 214
(4) █ Form 2, 5 April 1977 (with DIS Report of Investigation, 28 March 1977; Report of █, 28 February 1977; DD Form 1584, 31 December 1976; and FBI Background Check, 8 February 1977)
(5) █ CO Memo WJW:gr 6017, subj: Recommendation for Discharge by reason of fraudulent enlistment, 24 May 1977
(6) Petitioner's Memo, First Endorsement on Enclosure (5), subj: Recommendation for Discharge by reason of fraudulent enlistment, 28 May 1977 (with attached RTR Form 6710/5, Recruits Statement, 23 May 1977)
(7) RTR Form 6710/10, Endorsement on Proposed Administrative Discharge Action, 29 May 1977
(8) RTR Form 6710/11, Endorsement on Proposed Administrative Discharge Action, 2 June 1977
(9) █ – █ CO Memo CHL:ers 1130/4, subj: Alleged Police Record; case of [Petitioner], 23 June 1977 (with attached recruiter's statement)
(10) █ – █ CG Memo 7:TOD:pjs 1900, subj: Recommendation for Release from Military Control by Reason of Void Enlistment; notification of, 15 July 1977
(11) Petitioner's Memo, First Endorsement on Enclosure (10), subj: Recommendation for Release from Military Control by Reason of Void Enlistment; notification of, 15 July 1977
(12) █ – █ CG Memo 7:TOD:pjs 1900, subj: Voidance of Enlistment; case of [Petitioner], 19 July 1977

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]

[REDACTED] USMC

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, hereinafter referred to as the Board, requesting that his characterization of service be upgraded to honorable.

2. The Board reviewed Petitioner's allegations of error or injustice on 28 August 2023 and, pursuant to its regulations, found an error in Petitioner's naval relief warranting the relief indicated below. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies.

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

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 review Petitioner's application on its merits.

c. Petitioner applied for enlistment in the Marine Corps on 30 December 1976. In this application, he answered "No" to every question pertaining to previous involvement with police or judicial authorities. See enclosure (2).

d. Petitioner enlisted in the Marine Corps pursuant to the application referenced in paragraph 3c above, and began a period of active duty service on 14 March 1977. See enclosure (3).

e. On 5 April 1977, a Defense Investigative Service (DIS) background check revealed that Petitioner had been arrested for grand larceny on 2 April 1975. See enclosure (4).

f. By memorandum dated 24 May 1977, Petitioner was notified that he was being recommended for an administrative discharge by reason of fraudulent enlistment based upon his arrest record that he failed to reveal during his enlistment process, as revealed by the DIS background check. See enclosure (5).

g. By memorandum dated 28 May 1977, Petitioner acknowledged receipt of notice that he was being recommended for an administrative discharge by reason of fraudulent enlistment, and elected to make a statement for consideration. Specifically, he reported that his arrest occurred when he was helping a friend move a sofa when the police arrived, and when his friend ran off the police arrested him and charged him with larceny. Petitioner further reported that he told his recruiter about the arrest, but that the recruiter conducted a police check which did not reveal the arrest. See enclosure (7).

h. Petitioner's battalion commander subsequently recommended that Petitioner be retained in the Marine Corps despite his failure to disclose his previous arrest.¹ The battalion commander stated that Petitioner's attitude and general conduct at that point in his initial entry training had at

¹ This document reflects that Petitioner reported that the charge of larceny was dropped.

times been substandard, but that both he and the company commander believed that Petitioner would be a productive Marine if he were retained. See enclosure (8).

i. On 2 June 1977, the regimental commander concurred with the battalion commander's recommendation reflected in paragraph 3h above. See enclosure (9).

j. Following Petitioner's claim that he had told his recruiter about his previous arrest, an inquiry was conducted into the recruiter's role in Petitioner's failure to disclose his previous arrest. The recruiter admitted that Petitioner told him about the arrest, but said that the charges were dropped. Since the charges were dropped, the recruiter advised Petitioner not to list that charge on the enlistment application based upon his misunderstanding of the requirements regarding dropped charges. See enclosure (10).

k. By memorandum dated 15 July 1977, Petitioner was notified that he was being recommended for administrative release from the Marine Corps due to indications of a "void" enlistment. See enclosure (11).

l. By memorandum dated 15 July 1977, Petitioner acknowledged receipt of the notice discussed in paragraph 3k above. After waiving his right to counsel despite being advised to avail himself of the opportunity, Petitioner stated that he agreed with the proposal to void his enlistment contract and waived his right to make any statements or to a hearing. See enclosure (12).

m. By memorandum date 19 July 1977, Petitioner's commander was directed to release Petitioner from military control, citing reference (b)² and MCBUL 1900 as the authorities for this action. See enclosure (13).

n. On 19 July 1977, Petitioner was released from military control under the authority of paragraph 7024 of reference (b). See enclosure (3).

o. Petitioner asserts that his enlistment was erroneously voided after completion of his training. Specifically, he cites the provisions of paragraph 7024 of reference (b), under which authority his enlistment was voided, which does not apply to his circumstances.³ Accordingly, he claims that the decision to void his enlistment was an error under references (b) and (c).⁴ He further claimed to believe that he would remain in the Marine Corps after completion of his training based upon the recommendations of his chain of command and his recruiter's admission to misunderstanding the requirements for dropped charges, but returned from 10 days of leave to learn that the Commanding General had decided to void his enlistment. Petitioner asserts that he was erroneously told that his chain of command had recommended his release from the Marine Corps, and that he signed the notice and waiver of counsel without really understanding what was happening. He acknowledges now that he should have paid more attention to what he was signing and exercised his right to counsel, but claims that he was "young, upset and confused about what was going on."

² Specifically, paragraph 7024 of reference (b) was cited.

³ See paragraph 3p below.

⁴ Reference (c) is the statutory basis of reference (b).

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]

[REDACTED] USMC

p. Per paragraph 7024 of reference (b), an enlistment is void if it was entered into by a person who is insane; was intoxicated; has deserted in time of war from any of the Armed Forces (unless the enlistment is permitted by such authority as the Secretary of the Navy may designate; a male under 17 years of age; or a female under 18 years of age.

CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found an error warranting partial relief. As noted in paragraph 3p above, the authority under which Petitioner's enlistment was voided applies only under limited circumstances which did not apply to his situation. Petitioner was not insane or intoxicated at the time of his enlistment, had never deserted from any of the Armed Forces in time of war, and was over 17 years of age. Accordingly, it was an error to void his enlistment under the authority of paragraph 7024 of reference (b). Since there was no authority to void Petitioner's enlistment at the time, the Board determined that Petitioner's narrative reason for separation and separation authority should be changed to reflect the equivalent of "Secretarial Authority," and his reenlistment code changed to RE-1.

Despite finding an error in the authority under which Petitioner was discharged, the Board did not find that his limited period of service should be characterized as honorable as he requested. Although the evidence suggests that the quality of Petitioner's limited service in the Marine Corps was acceptable, his failure to disclose a pre-service arrest during the enlistment process was a significant negative factor which weighed against characterizing his service as honorable. In this regard, the Board took into consideration Petitioner's explanation of the events which resulted in his arrest and his failure to report this arrest as called for in the enlistment application, and the fact that the charges against him were dropped. However, the Board did not consider these mitigating factors to be sufficient justification to characterize Petitioner's service as fully honorable, especially considering that his attitude and general conduct were described by his chain of command as "substandard" during his relatively short service. Under these circumstances, the Board believed that Petitioner's service should be characterized as "General (under honorable conditions)."

RECOMMENDATION:

In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That Petitioner be issued a new DD Form 214MC with the following corrected information:

- Block 9a. Type of Separation: Discharged.
- Block 9c. Authority and Reason: MARCORSEPMAN PAR 6012.1g JFF2 Directed by the Secretary of the Navy to correct official records
- Block 9e. Character of Service: Under Honorable Conditions
- Block 9f. Type of Certificate Issued: DD-256-MC (General)
- Block 10. Reenlistment Code: RE-1

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
[REDACTED] USMC

All of the other information currently reflected on Petitioner's DD Form 214MC is to remain unchanged.

That a copy of this record of proceedings be filed in Petitioner's naval record.

That no further corrective action be taken on 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. In accordance with Section 6(e)(2)(c) of SECNAVINST 5420.193, I have determined that the Board's recommendation in this case warrants Secretarial review. Accordingly, the foregoing action of the Board is forwarded for your review and action.

9/27/2023

[REDACTED]

Subj: REVIEW OF NAVAL RECORD OF FORMER MEMBER [REDACTED]
[REDACTED] USMC

ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

___ Board Recommendation Approved (Grant Relief – I concur with the Board’s conclusions and therefore direct the relief recommended by the Board above.)

X Board Recommendation Disapproved (Deny Relief – While I concur with the Board’s conclusion that it was an error to void Petitioner’s enlistment pursuant to paragraph 7024 of reference (b), this error averred to the Petitioner’s favor. Rather than using this inapplicable authority to void Petitioner’s enlistment, his command technically should have administratively discharged Petitioner for fraudulent enlistment pursuant to paragraph 6017.3b(1) of reference (b). The record suggests that his command likely decided to void Petitioner’s enlistment, rather than pursuing the administrative discharge for fraudulent enlistment which had previously been initiated, in order to spare Petitioner the stigma that would follow from such an adverse discharge given the mitigating circumstances pertaining to his recruiter’s mistake. However, while the authority used to void Petitioner’s enlistment was technically an error, Petitioner specifically stated in enclosure (11) that he agreed with the proposal to void his enlistment contract after being specifically encouraged and provided the opportunity to consult with counsel. As such, both parties to Petitioner’s enlistment contract mutually agreed to void its terms. Accordingly, while the authority cited on Petitioner’s DD Form 214MC to void Petitioner’s enlistment contract may technically be an error, it was not necessarily an error to actually void the terms this contract. As it was actually more favorable to Petitioner to void the contract than to administratively discharge Petitioner for a fraudulent enlistment, and the erroneous citation to paragraph 7024 of reference (b) on Petitioner’s DD Form 214MC is harmless, I am not inclined to approve the recommendation of the Board which would negate Petitioner’s agreement to void his enlistment contract.)

10/6/2023

