



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

[REDACTED]
Docket No. 6133-24
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MCO P1900.16D, Marine Corps Separation and Retirement Manual, 27 June 1989

Encl: (1) DD Form 149 w/attachments
(2) Standard Form 88, Report of Medical Examination, 1 September 1993
(3) DD Form 214
(4) [REDACTED] CG Memo [REDACTED]
[REDACTED] subj: Request for a Moral Waiver Case of: [Petitioner], 21 September 1993
(5) USMC [REDACTED] Notification of Recycle/Termination from Training, 9 December 1994
(6) [REDACTED] CG Memo 1320 HQBN, subj: Entry Level Training, 12 December 1994
(7) NAVMC 118(11), Administrative Remars (1070), 21 February 1995
(8) Administrative Separation Notice Memorandum (illegible)
(9) Petitioner's Acknowledgment Memorandum (illegible)
(10) [REDACTED] CO Memo 1900 Adseps, subj: Recommendation for administrative discharge in case of [Petitioner], 22 March 1995
(11) [REDACTED] 1910 ADJ Speedletter, 19 April 1995

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 narrative reason for separation and separation authority be changed to reflect "Convenience of the Government – Due to Physical Standards."

2. The Board considered Petitioner's allegations of error or injustice on 15 July 2024 and, pursuant to its governing policies and procedures, determined by a majority vote that the equitable relief indicated below is warranted in the interests of justice. 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 the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found 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.

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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 limitation and consider Petitioner's application on its merits.

c. On 1 September 1993, Petitioner underwent a pre-enlistment medical examination pursuant to his pending enlistment in the Marine Corps. This examination identified Petitioner's pes planus (flat feet) condition, but described it as "mild" and "asymptomatic," and found Petitioner qualified for enlistment. See enclosure (2).

d. Petitioner subsequently enlisted in the Marine Corps and began a period of active duty service on 29 August 1994.¹ See enclosure (3).

e. Petitioner's feet began to hurt during Basic Warrior Training in boot camp at [REDACTED]. See enclosure (5).

f. On 9 December 1994, Petitioner was dropped from Marine Combat Training due to flat feet. See enclosure (5).

g. On 12 December 1994, Petitioner was assigned to temporary duty in the Basic Personnel Clerk course. See enclosure (6).

h. On 21 February 1995, Petitioner was formally counseled in writing regarding his "substandard [performance] evidenced by [his] lack of strength and endurance." This counseling indicated that Petitioner was unable to participate in any training which included even a minimal amount of physical exertion. It acknowledged that this inability may be due to a physical condition or injury beyond his control, and therefore directed Petitioner to seek immediate assistance from medical authorities. See enclosure (7).

i. The administrative separation documents in Petitioner's naval record are largely illegible, but reflect that he was notified that he was being processed for administrative separation in March 1995 and that Petitioner subsequently acknowledged this notice and elected not to consult with counsel or submit any statement in response. See enclosures (8) and (9).

j. By memorandum dated 22 March 1995, Petitioner's commander recommended that Petitioner be honorably discharged from the Marine Corps due to erroneous enlistment. See enclosure (10).

k. By memorandum dated 19 April 1995, the separation authority directed that Petitioner be honorably discharged from the Marine Corps for the convenience of the government by reason of erroneous enlistment. See enclosure (11).

l. On 27 April 1995, Petitioner was honorably discharged from the Marine Corps for the convenience of the government due to erroneous enlistment. See enclosure (3).

¹ Petitioner was enlisted pursuant to a moral waiver for a preservice burglary offense for which he was granted pre-trial diversion. See enclosure (4).

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m. Petitioner insists that it was an error to state the reason for his discharge as “erroneous enlistment” because he disclosed his flat feet condition during his enlistment process and was medically cleared for duty. See enclosure (1).

MAJORITY CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Majority of the Board determined that equitable relief is warranted in the interests of justice.

The Majority found no error in Petitioner’s administrative separation due to erroneous enlistment. Per paragraph 6204.2 of reference (b), a Marine could be separated on the basis of an erroneous enlistment if the enlistment would not have occurred had the relevant facts been known by the Marine Corps; the enlistment was not the result of fraudulent conduct on the part of the Marine; and the defect was unchanged in material respects. Given that Petitioner’s became symptomatic soon after beginning Marine Corps training, the evidence reflects that the medical examiner who cleared Petitioner for enlistment despite his pes planus underestimated the severity and symptomology of this condition. While there is no reason to believe that Petitioner knowingly contributed to this mistake since he disclosed the condition, he would not have been cleared for enlistment if the severity of the condition was known at the time. Accordingly, there was no error in discharging Petitioner for erroneous enlistment. That was the proper basis for his discharge under the circumstances.

The Majority found no merit to Petitioner’s contention that he should have instead been discharged for the convenience of the government due to physical standards pursuant to paragraph 6203.8 (of the Marine Corps Separation Manual (MARCORSEPMAN)). This basis for separation did not exist at the time of Petitioner’s service.²

Although the Majority found no error in Petitioner’s discharge due to erroneous enlistment, it determined that equitable relief is warranted in the interests of justice. Specifically, the Majority found that Petitioner bore no blame for the misdiagnosis which resulted in his erroneous enlistment, yet feels stigmatized by the narrative reason for separation reflected on his DD Form 214. Specifically, it appears that Petitioner mistakenly conflates his “erroneous enlistment” with a “fraudulent enlistment” and feels the stigma attached to the latter. Accordingly, the Majority determined that Petitioner’s narrative reason for separation (and associated separation authority and separation code) should be changed in the interests of justice to relieve Petitioner of this undeserved stigma.

MAJORITY RECOMMENDATION:

In view of the above, the Majority of the Board recommends 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 the narrative reason for his separation from the Marine Corps on 27 April 1995 was “Determination of Service Secretary –

² Paragraph 6203.8 did not appear in the MARCORSEPMAN as a basis for separation until MCO 1900.16 was published on 26 November 2013.

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Secretary of the Navy Plenary Authority"; that his separation authority was "MARCORSEPMAN par. 6214"; and that his separation code was "JFF1." All other entries reflected on Petitioner's current DD Form 214 are to remain unchanged.

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

That no further corrective action be taken on Petitioner's naval record.

MINORITY CONCLUSION:

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

The Minority concurred with the Majority conclusion there was no error in Petitioner's discharge from the Marine Corps for erroneous enlistment. In this regard, the Minority noted that Petitioner's own statements supported the determination that he was erroneously cleared for enlistment and he provided no evidence to refute that determination.

The Minority did not, however, concur with the Majority's conclusion that equitable relief is warranted in the interests of justice. Regardless of Petitioner's personal beliefs or feelings, there is no adverse stigma related to his narrative reason for separation. His narrative reason for separation accurately describes the reason that Petitioner was discharged from the Marine Corps and implies no wrongdoing or inadequacy on Petitioner's part. The alternative narrative reason for separation proposed by the Majority is just as likely to raise questions for third parties who may have reason to review Petitioner's DD Form 214 as is his current narrative reason, and the explanation that he had a debilitating pes plantar condition would apply equally to both. Accordingly, the Minority did not believe that a change to Petitioner's narrative reason for separation was warranted in the interests of justice.

MINORITY RECOMMENDATION

In view of the above, the Minority of the Board recommends that no 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. The foregoing action of the Board is submitted for your review and action.

8/1/2024

[REDACTED]

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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

____ MAJORITY Recommendation Approved (Grant Relief – I concur with the Majority conclusion and therefore direct the relief recommended by the Majority above.)

X MINORITY Recommendation Approved (Deny Relief – I concur with the Minority conclusion and therefore direct that no corrective action be taken on Petitioner's naval record. In reaching this conclusion, I also note that the Majority's conclusion would essentially negate a valid basis for separation established by Marine Corps regulations. Specifically, by directing a change to Petitioner's narrative reason for separation on the questionable basis relied upon by the Majority (i.e., an illusory stigma which does not actually exist), the Board would essentially be obligated to change the narrative reason for any discharge based upon erroneous enlistment in the future. To do otherwise after granting relief on this basis would be arbitrary and capricious. The long term effect of this precedent would be to essentially negate erroneous enlistment as a valid basis for separation within the Department of the Navy.)

[REDACTED]