



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

TRG
Docket No: 2064-00
16 May 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps submitted an application to this Board requesting that his record be corrected to show that he was not discharged on 15 April 1998 but was retained in the Marine Corps until he qualified to retire.

2. The Board, consisting of Mr. Zsalman, Mr. Chapman and Mr. Whitener, reviewed Petitioner's allegations of error and injustice on 1 May 2001 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 available under existing law and regulations within the Department of the Navy.

b. Petitioner's application was filed in a timely manner.

c. Petitioner reenlisted in the Marine Corps on 16 November 1991 for six years and on 1 September 1994 he was promoted to GYSGT (E-7). The fitness report for the period 25 August 1995 to 22 March 1996 reflects outstanding performance of duty, and he was strongly recommended for retention and promotion to first sergeant. At that time, he was 67" tall and he was "within alternative weight standards of 225 pounds." The fitness report for the period ending 31 October 1996 indicates that he was 68" tall, weighed 238 pounds, and "has an alternate weight standard of 225 pounds."

d. Petitioner has submitted a copy of a reenlistment

recommendation from his command,⁴ dated 26 October 1997, which indicates that his body fat was 18%. A message from Headquarters Marine Corps, dated 27 October 1997, authorized his reenlistment for three years if he was still qualified. The fitness report for the period 1 November 1996 to 31 October 1997, although it reflects outstanding performance of duty, is adverse because it states that Petitioner was "(n)ot recommended for reenlistment. (His) height is 68 inches, weight is 224 pounds, body fat is 24% and is not within established standards." The reviewing officer stated as follows:

Despite multiple warnings regarding his weight, (he) has failed to meet established goals. His OIC has had multiple counseling sessions with the GySgt to no avail. While an outstanding instructor and mentor, (he) has not met the standards set by HQMC. Despite his great leadership skills, excellent professional knowledge and infectious enthusiasm, (he) cannot be recommended for reenlistment or promotion. Concur with the Reporting Senior in his evaluation.

e. Since Petitioner's expiration of enlistment was 15 November 1997, Petitioner was then granted four short term extensions in order to appeal the decision not to allow reenlistment, and for transition purposes. The fitness report for the period 1 November 1997 to 15 March 1998 indicates he was not recommended for reenlistment. His weight was 235 pounds but the percent of body fat is illegible. The final fitness report, for the period ending 15 April 1998, indicates that he weighed 235 pounds and his body fat was 24% and that he "exceeds Marine Corps weight standards." Petitioner made a statement in rebuttal to the fitness report stating, in part, as follows:

... The body fat standard doesn't fit everyone and there are people who are exceptions to the rule. I consider myself to be one of those people. how can you release a Marine with an outstanding record. ... I've lifted weights from the time I set foot on my first duty station Their (sic) was a time in the Corps when I was a young Marine and I had to carry my load. Meaning my pack and all the communication equipment needed for the mission. Lifting weights gave me the strength to do so.

I suppose in todays Corps we want Marines who come to the fight looking pretty, but can't carry anything to fight with.

f. Petitioner was honorably discharged on 15 April 1998, at the expiration of his enlistment as extended. The type of

discharge, separation authority,⁴ separation code and narrative reason for separation were "physical standards", "MARCORSEPMAN Par 6203.2", "JFT1", and "Involuntary discharge, directed by established directive", respectively. Since he was not qualified for reenlistment and his discharge was involuntary, he was paid one half separation pay. At that time of discharge he had completed 17 years, 8 months and 2 days of active service.

g. Petitioner states in his application that as he was waiting to reenlist, the Navy commander who was his reporting senior became aware of an inspection report in which he was "flagged" as not making progress on weight control. He was then reevaluated under the new weight control directive and found not qualified for reenlistment. He states he was allowed to present his case for reenlistment to a Marine Corps general, who gave him 45 days to reach the weight standards. He states that he met the standards but his reenlistment was denied by HQMC.

h. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps which states, in part, as follows:

.... (Petitioner's) assignment to weight control should have resulted in disapproval of his request for reenlistment, particularly if this request was submitted prior to 1 October 1997. ... (T)he BCNR application indicates a command reenlistment request (22 Oct 97) and subsequent HQMC approval (27 Oct 97) for reenlistment. Reference (a) (ALMAR 326/97) allowed a Marine to be within body composition standards if body fat standards were met, despite weight standards being exceeded. Additionally, reference (a) permitted commands to "re-evaluate" their weight control assignments and remove Marines from the program if they were found to be within body fat standards. Confusion rests with (Petitioner's) statement that he was re-evaluated and exceeded height/weight/body fat standards of 22-23%. However, his reenlistment request lists his body fat as 18%. If SNM was re-evaluated for body fat standards after 1 Oct 97 change(s) to reference (b) (MCO 6100.10B, Weight Control and Military Appearance) would have been in effect, and therefore, would have placed the Marine above established body fat standards.

...(Petitioner) identified a "lack of time to prepare" for changes to reference (b). However, due to the improved accuracy of the four-compartment analysis body fat computations enacted per reference (a), it was determined that a grace period was unwarranted since the "new" standards were viewed as less restrictive and more precise. With the exception of the 22 Oct 97

"reenlistment request" there is no additional information to suggest that (Petitioner) was ever within the 18% body fat standard. This fact begs the question as to how a Marine could be at 18% in October, and within one month, measured at 22-23%. There is no record of SNM having been on a previous alternate weight waiver, and with a body weight of 225 pounds, he was 44 pounds over the maximum allowable weight.

... Colonel (T's) refusal to allow a "hydrostatic weighing" of (Petitioner) to attain an alternate body fat evaluation was correct. According to DoD Instruction 1308.1, *Physical Fitness and Body Fat Program*, the services can only utilize the tape/circumference method for measuring body fat. Body fat analysis is only to be used when a service member exceeds the initial weight for height screen.

i. Also attached to enclosure (1) is an advisory opinion from the Separation Retirement Branch, HQMC which recommends that the narrative reason for separation on the DD Form 214 be changed to "NON-RETENTION ON ACTIVE DUTY" (block 23); the separation authority be changed to "MARCORSEPMAN Par 1005" (block 25); the separation code be changed to "JGH2" (block 26); and Narrative Reason for Separation be changed to "Involuntary discharge - no further service" (block 28). The Board is aware that appendix B, page 6 of the MARCORSEPMAN sets forth the entries that can be made in block 23 of the DD Form 214. Those entries do not include "NON-RETENTION ON ACTIVE DUTY". The only entry that fits the circumstances of Petitioner's case is the word "Discharged".

j. Petitioner states in his rebuttal to the advisory opinion that because he was body building and power lifting throughout his Marine Corps career, he has developed a large muscle mass. He has provided evidence that contrary to the statement in the advisory opinion, he was issued an alternative weight standard. He has submitted a copy of a 24 September 1991 letter from his commanding officer which indicates that he was 68" tall, weighed 215 pounds and his maximum weight was 181 pounds. It noted that he was within the alternate standards of 18% body fat due to the high volume of lean muscle mass and low percentage of body fat. It also noted that his waist was 38", his neck was 17.5" and he had scored 1st class on his PFT. The letter granted him an alternative weight of 217 pounds. He has also submitted a copy of an authorization from his commanding officer, dated 15 December 1995, granting him an alternate weight of 225 pounds. He points out that these factors and his outstanding performance of duty mean that he was well qualified for reenlistment.

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k. The Board is aware that regulations allow for the payment of one half separation pay if an individual is not fully qualified for reenlistment. However, the Secretary of the Navy may authorize full separation pay in deserving cases.

l. Had Petitioner attained 18 years of active service 10 U.S.C. § 1176(a) would have required that his enlistment be extended in order for him to complete 20 years of active service.

m. The Board is also aware that the Temporary Early Retirement Authority (TERA) was never implemented by the Marine Corps but the statutory authority to grant early retirement existed at the time of Petitioner's separation and exists now. The Board is aware that in one other case a recommendation by this Board for retirement under TERA for a former Marine was approved by the Assistant Secretary of the Navy. The Board notes that TERA has been used extensively by the Navy.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, the majority, consisting of Mr. Zsalman and Mr. Chapman, concludes that Petitioner's request warrants favorable action. The majority notes that the Marine Corps has the authority to deny reenlistment to individuals who do not meet the weight standards. Further, it is clear that when discharged, Petitioner's weight of 235 pounds exceeded even the most liberal alternative weight standard. However, the majority also notes Petitioner's many years of excellent service, the fact that he was physically fit and apparently could not meet the weight standards, at least in large part, because of his muscle mass. Accordingly, the majority concludes that in this case an exception to policy should be made and the payment of full separation pay should be authorized. The majority also concludes that certain corrections to Petitioner's DD Form 214 should be made in order to more accurately reflect the fact that reenlistment was denied because of his failure to meet standards. As indicated, the corrections are slightly different from those recommended in the advisory opinion. The majority considered a correction to the record to make Petitioner eligible for retirement or early retirement under TERA, but concludes that the facts of this case do not warrant such extraordinary relief.

The majority further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand the reason for payment of full separation pay.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that on 15 April 1998 he was paid full separation pay vice the one half separation pay now of record.

b. That Petitioner's naval record be further corrected by changing blocks 23, 25, 26 and 28 on his DD Form 214 to "DISCHARGED", MARCORSEPMAN Par 1005, "JGH2" and "Involuntary discharge - No further service", respectively.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

d. That the remainder of his requests be denied.

MINORITY CONCLUSION:

Mr. Whitener disagrees with the majority and concludes that Petitioner's request warrants more favorable action than that recommended by the majority. The minority notes Petitioner's many years of outstanding service, his many years of weight lifting and the fact that he was granted alternative weight standards for several years. He also notes that if Petitioner had attained 18 years of active service, his retention to 20 years of active service would have been required. Given the circumstances, he believes that equity requires that Petitioner be retired under the provisions of TERA as an exception to policy. Therefore, because retirements must occur on the first of the month, the record should be corrected to show that he extended his enlistment for the minimum period of one month and that on 1 May 1998 he then transferred to the Fleet Marine Corps Reserve under the provisions of TERA.

The minority also concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his retirement under TERA.

MINORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he extended his enlistment for one month and that he was then retired or transferred to the Fleet Marine Corps Reserve under the provisions of TERA effective 1 May 1998.

b. 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 entitled matter.

ROBERT D. ZSALMAN
Recorder



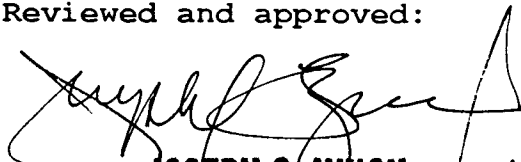
ALAN E. GOLDSMITH
Acting Recorder

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



W. DEAN PFEIFFER

MAJORITY REPORT
Reviewed and approved:



JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)

JUL 16 2001

MINORITY REPORT
Reviewed and approved: