

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF IDAHO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Case No. CR-O4-127-C-(RCT)
v.	)	
	)	<b>Affidavit of Chief Warrant</b>
DAVID ROLAND HINKSON,	)	<b>Officer W. E. Miller</b>
	)	
Defendant.	)	
_____	)	

I, United States Marine Corps Chief Warrant Officer W. E. Miller, upon oath, depose and state as follows:

1. I am over the age of eighteen years at the time of signing this Affidavit and I am qualified, competent and knowledgeable to provide the information set forth herein.

2. I am an officer in the United States Marine Corps (USMC) serving as the USMC Liaison Officer to the National Personnel Records Center (NPRC), Military Personnel Records Division, located at 9700 Page Avenue, St. Louis, Missouri and I make this Affidavit based upon information obtained in the ordinary course of business for the USMC as conducted at the NPRC.

3. As a part of my duties as the said USMC Liaison Officer I have access to the official United States military records of former members of the USMC which are deposited in the NPRC and, among my other responsibilities, I evaluate the authenticity of information, records and documents affecting individual Defense Department transfer documents including DD Forms 214. The scope of my work includes the review of records, documents and information submitted by or on behalf of former Marines who are seeking revision of their status as to military awards, commendations, medals and/or Veterans Administration benefits as those items are designated on their individual DD Forms 214 and are entitlements based on performance, actions or meritorious service during their tour of active duty.

4. I have reviewed the official U.S. military record as well as information, documents and purported records submitted on behalf of former Marine Elven Joe Swisher (herein "Swisher") Social Security number 499 38 8841 with military identification number 1517120.

5. From Swisher's official U.S. military record I have determined that Swisher served on active duty in the USMC from 4 August 1954 until his release on 3 August 1957; thereafter, he was a USMC Reservist until his discharge from the Reserves on 3 August 1962.

6. I have reviewed the determination of the USMC contained in the letter (attached as Exhibit A and incorporated herein by reference) dated 30 December 2004 concerning verification of Swisher's claim for U.S. military commendations, personal decorations, awards and medal entitlement, if any, for the period he was on active duty as a member of the USMC, which letter was written by USMCR Lieutenant Colonel K.G. Dowling (Assistant Head of the Military Awards Branch at the Headquarters of the USMC at 320 Russell Road, Quantico, Virginia 22134-5103) to Mr. Ben Keeley (SVSO State of Idaho Division of Veterans Services in Lewiston, Idaho). This letter from USMC Headquarters provides the type of information usually and customarily relied upon by me in verifying the authenticity of documents and/or records submitted by or on behalf of a former Marine. By directive of the Commandant of the USMC, Exhibit A has now been filed in and become a part of Swisher's official U.S. military record.

7. I also reviewed a letter (attached as Exhibit B and incorporated herein by reference) dated 14 January 2005 from Bruce R. Tolbert, in his capacity as an Archives Technician at the NPRC in the Military Personnel Records Department, addressed to Leslie (sic) Hoyt Law Office in response to a request for military service record information pertaining to Swisher. Exhibit B is a letter from the U.S. Government's NPRC records archive and provides the type of information usually and customarily relied upon by me in verifying the authenticity of documents and/or records submitted by or on behalf of former Marines.

8. I am aware that Swisher submitted information to Mr. Keeley of Idaho by which Swisher was seeking recognition from the U.S. Department of the Navy and USMC concerning the award of certain commendations, personal decorations and/or medals to which he claimed he was entitled as a result of his active duty assignments with the USMC.

9. Swisher's claim of entitlement to medals is set forth on a purported replacement DD Form 214 of 15 October 1957 bearing Swisher's name (attached hereto as Exhibit C and

incorporated herein by reference). There is a representation on Exhibit C, box 32, which provides that “[t]he original of this DD 214 has been forwarded to headquarters MC 10-15-57.” I have ascertained that Exhibit C does not exist in Swisher’s official file of his U.S. military record and there is no independent confirmation Exhibit C has, previous to the 2004 submission to USMC Headquarters, ever been seen, recognized or filed in Swisher’s official military record.

10. The authentic DD Form 214 that does exist in Swisher’s official military record was issued 3 August 1957 and is attached hereto, marked as Exhibit D and incorporated herein by reference.

11. I reviewed Exhibit C for the first time after it was submitted on Swisher’s behalf by Mr. Keeley and after it was referred to for review along with other documents which were forwarded to Lt. Col. Dowling of the Military Awards Branch at the Headquarters of the USMC in 2004.

12. Exhibit C bears Swisher’s name and, to a person without training in the field of military records, may appear to be a validly-issued Defense Department DD Form 214 that substitutes as a replacement for the originally issued DD Form 214 issued 3 Aug. 57. As a part of my official duties, it is my responsibility to determine if Exhibit C is authentic.

13. Exhibit C and other documents provided by Swisher, including a letter purportedly signed by Capt. W.J. Woodring JR., of 16 October 1957, were forwarded by Mr. Keeley to the NPRC on Swisher’s behalf in 2004. When questions were raised as to the authenticity of Exhibit C in the office of the NPRC, the documents submitted by Swisher through Mr. Keeley and Swisher’s official U.S. military record file were sent to the Military Awards Branch of the Marine Corps for review and a determination as to his entitlement to medals. At the center of the inquiry is Swisher’s claim for medals he maintains were earned during his tour of active duty.

14. Swisher’s official U.S. military record, along with Exhibit C and the above described supporting letter purportedly signed by Capt. W.J. Woodring JR. in 1957 have been reviewed by the Military Awards Branch USMC and a determination has been made as set forth on Exhibit A (Lt. Col. Dowling’s letter of 30 Dec. 04) that Swisher was not entitled to any medals.

15. The authentic DD Form 214 was signed by both Swisher and his discharging officer, Capt. W.J. Woodring JR., the Personnel Officer in Swisher's Unit, and does is not annotated with any information regarding the award of medals in box 26 nor does it contain any mention of combat "wounds" sustained by Swisher in box 27.

16. By virtue of Swisher's subsequent claim of participation in a secret (classified) Marine Corps expeditionary mission, allegedly to liberate Prisoners of War in Korea, while he was on active duty and considering the information contained on Exhibit C (Swisher's purported replacement DD Form 214) Swisher claims he is entitled to the Silver Star Medal, Navy and Marine Corps. Medal (Gold Star in lieu of the Second Award), Purple Heart, and Navy and Marine Corps Commendation Medal with Bronze "V" (the last reference of which is an incorrect medal designation reference, instead of "Bronze" it should say "Combat").

17. The Headquarters of the USMC and the Navy Department Board of Decorations and Medals made a thorough investigation of Swisher's official U.S. military record and claims of awards for participation in said classified mission to Korea while he was on active duty, which investigation failed to reveal any information that Swisher was ever recommended for, or awarded any personal decorations during his tour of active duty.

18. Pursuant to the investigation referenced in Exhibit A, the U.S. Department of the Navy and the USMC have determined that the Navy and Marine Corps Commendation Medal (which is listed in bok 26 of Exhibit C) did not exist in that form at the time of Swisher's transfer to the Marine Corps Reserve in 1957. On 22 March 1950, a Metal Pendant was authorized for issue in connection with a Letter of Commendation and commendation ribbon. On 21 September 1960, the Secretary of the Navy changed the name of the award to the Navy Commendation Medal. On 19 August 1994 the Secretary of the Navy renamed the medal as the Navy and Marine Corps Commendation Medal.

19. Based on the USMC determination set forth in Exhibit A (Lt. Col. Dowling's letter of 30 Dec. 04) Swisher's discharging officer, Capt. W. J. Woodring, JR., in 1957 would not have been able to list the award of the Navy and Marine Corps. Commendation Medal as shown on Exhibit C

(box 26) or as suggested in said supporting letter purportedly signed by Capt. Woodring, because that Medal did not exist in its present form until 1994. Therefore, based on this determination that Exhibit C misstates the award of the Navy and Marine Corps Commendation Medal, I find that Exhibit C is not authentic; and said supporting letter purportedly signed by Capt. Woodring in 1957 is likewise not authentic.

20. The assertion that Swisher had post-Korean War USMC expeditionary experience into Korea and sustained combat wounds, thus making him eligible for a Purple Heart, has no merit for the following reasons:

- A. Swisher's medical records show that he did not sustain any combat wounds, rather he was involved in a private motor vehicle accident near Port Townsend, Washington on 10 February 1957 and was treated at the hospital in Bremerton, Washington. The injuries sustained in said motor vehicle accident were not service-connected and would not entitle Swisher to a designation for VA medical benefits in box 31b of Exhibit C; there is no entry in box 31b of Exhibit C, which is inconsistent with the authentic DD Form 214 of 3 Aug. 57 (Exhibit D) and leaves open a question as to Swisher's entitlement to VA medical benefits.
- B. The DD Form 214 signed by Swisher on 3 August 1957 (Exhibit D) which is a part of his official U.S. military record contains a specification that he was not entitled to VA benefits (see box 31b marked "VA Claim Number" where "N/A" is the proper designation consistent with Swisher's official U.S. military and medical records);
- C. Swisher's official U.S. military record indicates that he was subject to an Article 115 disciplinary action resulting in a demotion from Corporal to Private First Class on 28 Feb. 56 which involved disobedience to military law during his active tour of duty;
- D. Swisher's official U.S. military record shows that rather than being assigned to missions in post-War Korea (as claimed by Swisher) he was stationed at Camp Fuji and Yokosuka, Japan from 4 March 1955 to 6 May 1956 with no supporting documentation or information to indicate that he participated in any classified Marine Corps expeditionary operation that performed incursions into Korea during his tour of active duty. As shown below, participation in a classified operation does not preclude receipt of a medal to which a Marine is entitled. Expeditionary forces, such as rescue missions described by Swisher, would have been handled by Marine Special Forces members not basic Marines who are PFC's, such as Swisher who was a Rifleman. Additionally, Swisher's disciplinary record would suggest that he was not a likely candidate for Special Forces and had never received Special Forces training or schooling in preparation for an expeditionary operation, which schooling would have been annotated on his authentic DD Form 214, and no confirmation of such schooling appears on either Exhibit C or D or his official U.S. military record;

- E. Swisher asserts that the expeditionary missions he was involved with in Korea were classified as “Top Secret” operations. The U.S. Marine Corps did not perform any classified operations or “Top Secret” operations during Swisher’s tour of duty. There is no information available from any reliable source that indicates the Marines engaged in any expeditionary force operations into Korea that were non-classified as suggested by Swisher during his tour of duty. There is no information available from any reliable source that Swisher’s official U.S. military record has ever been classified for any reason or that his file has been held at the Headquarters of the Marine Corps, except during 2004 when it was reviewed as described in Exhibit A (Lt. Col. Dowling’s letter).
- F. It is the official policy of the USMC that a Marine recognized with any Navy and/or Marine Corps personal decoration for either performance, actions or meritorious service while involved in a classified military operation is permitted to receive the award, medal or citation to which said Marine is otherwise entitled. When such award, medal or citation is to be received by a Marine as a result of a classified operation, the designation on said Marine’s DD Form 214 will contain non-specific information about the classified action or service of that Marine. However, in Swisher’s case, there is no evidence in his official U.S. military record that he received any award, medal or citation in any U.S. Military operation, whether classified or not.

21. Because a) Neither Swisher’s official U.S. military record nor his medical records substantiate his claim that he is entitled to a Purple Heart Medal, b) there are no witnesses listed as to any alleged combat wounds sustained by Swisher from enemy fire, c) no combat wounds are annotated in Swisher’s official military or medical records, d) no supporting documents exist showing that Swisher engaged in combat in Swisher’s official military record, d) Swisher’s had disciplinary problems underlying the Article 115 demotion in rank, and e) Marine Corps Headquarter determined that Swisher was not entitled to the award of any medals, I find that Swisher would not have been in a position to be considered for a Purple Heart Medal. There being no evidence to indicate that a Purple Heart Medal was awarded to or merited by Swisher, I conclude that Swisher is not a person entitled to wear the Purple Heart Medal.

22. The finding that Exhibit C is not an authentic document is supported by the following additional factors:

- A. Military Rules and Procedures require that a DD Form 214 can only be reissued and retyped at the Headquarters of the USMC and signed by a designee of the Commandant of the Marine Corps who offices at Headquarters. Capt. Woodring never held such designation.

- B. Exhibit C, in box 32, provides: “[t]his document replaces the previously issued transfer document of 8-3-57.” There are no additional records in Swisher’s file that support the claim that Swisher’s original DD Form 214 was replaced;
- C. Exhibit C, box 32, provides: “[c]hanges and additions have been verified by Command.” Changes or additions in Swisher’s original DD Form 214 if truly “verified by Command” would have resulted in verification documents becoming a part of Swisher’s official U.S. military record in order for an authorization to have been issued to replace his authentic DD Form 214 or more correctly, in order for a replacement DD Form 215 to be issued;
- D. Any “changes or additions” to a DD Form 214 would have been directed to the USMC Liaison office where the changes would have been annotated and a memorandum to the file would have been generated and placed in the Marine’s official U.S. military record. There are no such memorandums or communications in Swisher’s file related to the changes or additions as claimed by him. Additionally, any changes or additions would have been subject to verification and would have been mentioned in Swisher’s official U.S. military record. Without such documentation, under military rules and procedure, it is not possible for any change to be made in a Marine’s DD Form 214;
- E. Exhibit C, box 32 provides: “[t]he original of this DD 214 [meaning Swisher’s replacement version of the DD Form 214 apparently created 15 October 1957] has been forwarded to headquarters MC (10-15-57).” No documentation exists that supports this statement either in Marine Corps Headquarters or in Swisher’s official U.S. military record.
- F. Exhibit C is, as reflected in the form description line of Exhibit C, a copy that belongs to the Marine Corps. The DD Form 214 is a multi-copy form with precise designation as to the destination of each copy. It would be a violation of military policy and procedures for the individual, who is the subject of the form, to have in his possession a Marine Corps copy as a part of his records;
- G. Military policy and procedure which has been in effect since before the time of Swisher’s transfer from active duty to the USMC Reserves on 3 Aug. 57 would have directed the issuance of a DD Form 215 first, before any replacement version of Swisher’s original DD Form 214 would have been issued. Said policy and procedure directs the preparation of up to two DD Forms 215 which can be signed by the USMC Liaison Officer before a DD Form 214 is rewritten. In the even that a DD Form 214 is rewritten, it must be typed at Headquarters USMC and can only be signed by a designee of the Commandant of the Marine Corps;
- H. There is no record of a DD Form 215 ever having been issued for Swisher;
- I. Swisher’s discharging officer at the time of his transfer to the USMC Reserves on 3 August 1957, was Capt. W.J. Woodring JR., USMC, Personnel Operations. Swisher was a member of Capt. Woodring’s Unit at the time of Swisher’s transfer to the Reserves. Under military policy and procedure, a supervising officer may only sign a DD Form

214 for members of his Unit. Capt. Woodring was not the officer responsible for Swisher on 15 October 1957 because Swisher was no longer in Capt. Woodring's Unit as Swisher had transferring to the Reserves. The portrayal on Exhibit C that Capt. Woodring was the proper signatory authority for a replacement DD Form 214 means that Capt. Woodring was transferred to the same Reserve Unit as Swisher and, by 15 October 57, obtained the position of Personnel Officer in said Reserve Unit and simply is not accurate and further points to the fact that Exhibit C is not authentic.

23. Exhibit A (Lt. Col. Dowling's letter of 30 Dec. 04) now is a part of Swisher's official U.S. military record as it was prepared as a result of the investigation of Swisher's claims to the Military Awards Branch of the office of the Commandant of the Marine Corps. The determination of the Commandant of the Marine Corps that Swisher was not entitled to, recommended for, or awarded any personal decorations or medals as claimed by him stands as a part of Swisher's official U.S. military record and is the basis for my determination, along with the other information contained in this Affidavit, that Exhibit C (Swisher's purported replacement DD Form 214) is not authentic, rather, it is a forgery.

FURTHER AFFIANT SAYETH NAUGHT.

Signed and sworn to under penalty of perjury this \_\_\_ day of February, 2005.

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Chief Warrant Officer, W.E. Miller, USMC