

ex-LCpl, USMC

CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130111

Characterization of Service Received: (per DD 214) GENERAL (UNDER HONORABLE CONDITIONS)

Narrative Reason for Discharge: (corrected) MISCONDUCT

Authority for Discharge: (corrected) MARCORSEPMAN 6210.6 [COMMISSION OF A SERIOUS OFFENSE]

Applicant's Request: Characterization change to: HONORABLE

Narrative Reason change to: NONE REQUESTED

SUMMARY OF SERVICE

Prior Service:

Inactive: USMCR (DEP) 19990527 - 19990926 COG Active: NONE

Period of Service Under Review:

Date of Current Enlistment: 19990927

Age at Enlistment: 19

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20050526

Highest Rank: SERGEANT

Length of Service: 05 Years 08 Months 00 Days

Education Level: 12

AFQT: 73

MOS: 0351

Fitness Reports: AVAILABLE

Awards and Decorations (per DD 214): Rifle MM Pistol MM NMCAM GCM GWOTEM GWOTSM KDSM SDDR (2)
NDSM MUC CoC (3)

Periods of UA: NONE

NJP: NONE SCM: NONE CC: NONE Retention Warning Counseling: NONE

SPCM: 1

- 20050427: Article 92 (Failure to obey order or regulation)
- Article 93 (Cruelty and maltreatment, 3 specifications)
- Article 128 (Assault, 4 specifications)
- Sentence: CONF 30 days (20050427-20050509, 13 days) RIR E-3

ADMINISTRATIVE CORRECTIONS TO THE APPLICANT'S DD 214

The NDRB did note administrative error(s) on the original DD Form 214:

Block 12a, Date Entered AD This Period, should read: "1999 09 27"

Block 12c, Net Active Service This Period, should read: "05 07 17"

Block 25, Separation Authority, should read: "MARCORSEPMAN 6210.6"

Block 28, Narrative Reason for Separation, should read: "MISCONDUCT"

The NDRB will recommend to the Commandant of the Marine Corps that the DD 214 be corrected as appropriate.

Key: NFIR - Not found in record	RESTR - Restriction	NJP - Nonjudicial punishment	SCM - Summary court-martial
SPCM - Special court-martial	FOP - Forfeiture of pay	RIR - Reduction in rank	EPD - Extra duties
CONF - Confinement	CC - Civilian conviction	CCU - Correctional Custody Unit	CBW - Confinement on bread and water

TYPES OF DOCUMENTS SUBMITTED/REVIEWED

Related to Military Service:

DD 214: Service/Medical Record: Other Records:

Related to Post-Service Period:

Employment: Finances: Education/Training:
 Health/Medical Records: Rehabilitation/Treatment: Criminal Records:
 Personal Documentation: Community Service: References:
 Department of VA letter: Other Documentation:
 Additional Statements:
 From Applicant: From/To Representation: From/To Congress member:

PERTINENT REGULATION/LAW

- A. Paragraph 6210, MISCONDUCT of the Marine Corps Separation and Retirement Manual, (MCO P1900.16F), effective 1 September 2001 until Present.
- B. Secretary of the Navy Instruction 5420.174D of 22 December 2004, Naval Discharge Review Board (NDRB) Procedures and Standards, Part II, Para 211, Regularity of Government Affairs, Part V, Para 502, Propriety and Para 503, Equity.
- C. The Manual for Courts-Martial authorizes the award of a punitive discharge if adjudged as part of the sentence upon conviction by a special or general court-martial for violation of the UCMJ, Articles 92, 93, and 128.

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**DEPARTMENT OF THE NAVY
NAVAL DISCHARGE REVIEW BOARD (NDRB)
DISCHARGE REVIEW DECISIONAL DOCUMENT**

APPLICANT'S ISSUES

1. The Applicant contends his in-service performance and conduct are worthy of consideration for an upgrade.
2. The Applicant contends he was denied due process by being denied the ability to submit clemency matters to the Convening Authority prior to being administratively separated.
3. The Applicant contends he was improperly separated for misconduct under 6210.8 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN).
4. The Applicant contends his post-service accomplishments and conduct are worthy of consideration for an upgrade.

DECISION

Date: 20131016 DOCUMENTARY REVIEW Location: WASHINGTON D.C. Representation: Civilian Counsel

By a vote of 5-0 the Characterization shall remain GENERAL (UNDER HONORABLE CONDITIONS).

By a vote of 5-0 the Narrative Reason shall remain MISCONDUCT.

DISCUSSION

The NDRB, under its responsibility to examine the propriety and equity of an Applicant's discharge, is authorized to change the character of service and the reason for discharge if such change is warranted. In reviewing discharges, the Board presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence to rebut the presumption, to include evidence submitted by the Applicant. The Board did complete a thorough review of the circumstances that led to his discharge and the discharge process to ensure his discharge met the pertinent standards of equity and propriety. The Applicant's record of service included one special court-martial (SPCM) for violations of the UCMJ: Article 92 (Failure to obey order and regulation), Article 93 (Cruelty and maltreatment, 3 specifications), and Article 128 (Assault, 4 specifications). Based on the offenses committed by the Applicant, his command administratively processed him for separation. The NDRB did not have the Applicant's complete administrative separation package to determine whether or not the Applicant waived his rights to consult with a qualified counsel, submit a written statement, and request an administrative board. However, per the Applicant's statement and separation code of HKQ1 on his DD Form 214, the Applicant waived his right to appear before an administrative board.

Issue 1: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends his in-service performance and conduct are worthy of consideration for an upgrade. The Applicant submitted numerous documents and cited numerous in-service achievements in support of this contention. The characterization of service is determined by the quality of the member's total performance of duty and conduct during the current enlistment, including the reason for separation. Other considerations shall be given to the member's length of service, grade, aptitude, and physical and mental condition. Based on the Applicant's record of service, the NDRB determined the Applicant's service was honest and faithful but significant negative aspects of his conduct or performance of duty outweighed the positive aspects of his service record, and the awarded characterization of service was warranted. Relief denied.

Issue 2: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends he was denied due process by being denied the ability to submit clemency matters to the Convening Authority prior to being administratively separated. Administrative discharge processing is administrative in nature and a separate and distinct process from punitive proceedings such as NJP or court-martial. As such, the Applicant's contention that he was denied the ability to timely submit his request for clemency following his Special Court-Martial did not affect the propriety or equity of the administrative discharge. Furthermore, the Applicant was provided the opportunity to present his case before an administrative board, but he waived that right, thus accepting the discharge recommended in the letter of notification. Relief denied.

Issue 3: (Decisional) (Propriety) RELIEF NOT WARRANTED. The Applicant contends he was improperly separated for misconduct under 6210.8 of the MARCORSEPMAN. The NDRB concurs that Block 25 on the Applicant's DD Form 214 is incorrect and should read, "MARCORSEPMAN 6210.6," which is appropriate for commission of a serious offense. The NDRB will recommend to the Commandant of the Marine Corps that his DD Form 214 be revised. This administrative error, however, does not affect the propriety or equity of the Applicant's discharge. Relief denied.

Issue 4: (Decisional) (Equity) RELIEF NOT WARRANTED. The Applicant contends his post-service accomplishments and conduct are worthy of consideration for an upgrade. The NDRB considers outstanding post-service conduct to the extent such matters provide a basis for a more thorough understanding of the Applicant's performance and conduct during the period of service under review. The Applicant provided multiple post-service documents that included a personal statement; four character references; and multiple certifications, letters of commendation, and letters of appreciation for his work as an Emergency Medical Technician. Completion of these items alone does not guarantee an upgrade from an unfavorable discharge as each discharge is reviewed by the Board on a case by case basis to determine if post-service conduct establishes that the in-service misconduct was an aberration. The Board determined the characterization of service received was appropriate considering the length of service and UCMJ violations. Relief denied.

Summary: After a thorough review of the available evidence, to include the Applicant's summary of service, service record entries, and discharge process, the Board found the discharge was proper and equitable. Therefore, the awarded characterization of service shall remain GENERAL (UNDER HONORABLE CONDITIONS) and the narrative reason for separation shall remain MISCONDUCT. The Applicant remains eligible for a personal appearance hearing for a period of fifteen years from the date of his discharge. The Applicant is directed to the Addendum for additional information.

ADDENDUM: Information for the Applicant

Complaint Procedures: If you believe the decision in your case is unclear, not responsive to the issues you raised, or does not otherwise comport with the decisional document requirements of DoD Instruction 1332.28, you may submit a complaint in accordance with Enclosure (5) of that Instruction to the Joint Service Review Activity, OUSD (P&R) PI-LP, The Pentagon, Washington, DC 20301-4000. You should read Enclosure (5) of the Instruction before submitting such a complaint. The complaint procedure does not permit a challenge of the merits of the decision; it is designed solely to ensure that the decisional documents meet applicable requirements for clarity and responsiveness. You may view DoD Instruction 1332.28 and other Decisional Documents by going online at "<http://Boards.law.af.mil>."

Additional Reviews: After a document review has been conducted, former members are eligible for a personal appearance hearing, provided the application is received at the NDRB within 15 years of the Applicant's date of discharge. The Applicant can provide documentation to support any claims of post-service accomplishments or any additional evidence related to this discharge. Representation at a personal appearance hearing is recommended but not required. There are veterans organizations such as the American Legion and the Disabled American Veterans that are willing to provide guidance to former service members in their efforts to obtain a discharge upgrade. If a former member has been discharged for more than 15 years, has already been granted a personal appearance hearing or has otherwise exhausted their opportunities before the NDRB, the Applicant may petition the Board for Correction of Naval Records (BCNR), 701 South Courthouse Road, Suite 1001, Arlington, VA 22204-2490 for further review.

Service Benefits: The U.S. Department of Veterans Affairs (VA) determines eligibility for post-service benefits, not the NDRB. There is no requirement or law that grants recharacterization solely on the issue of obtaining veterans benefits and this issue does not serve to provide a foundation upon which the Board can grant relief.

Employment/Educational Opportunities: The NDRB has no authority to upgrade a discharge for the sole purpose of enhancing employment or educational opportunities. Regulations limit the NDRB's review to a determination of the propriety and equity of the discharge.

Reenlistment/RE-code: Since the NDRB has no jurisdiction over reenlistment, reentry, or reinstatement into the Navy, Marine Corps, or any other of the Armed Forces, the NDRB is not authorized to change a reenlistment code. Only the BCNR can make changes to reenlistment codes. Additionally, the NDRB has no authority to upgrade a discharge for the sole purpose of enhancing reenlistment opportunities. An unfavorable "RE" code is, in itself, not a bar to reenlistment. A request for a waiver can be submitted during the processing of a formal application for reenlistment through a recruiter.

Medical Conditions and Misconduct: DoD disability regulations do not preclude a disciplinary separation. Appropriate regulations stipulate that separations for misconduct take precedence over potential separations for other reasons. Whenever a member is being processed through the Physical Evaluation Board, and is processed subsequently for an administrative involuntary separation or is referred to a court martial for misconduct, the disability evaluation is suspended pending the outcome of the non-disability proceedings. If the action includes either a punitive or administrative discharge for misconduct or for any basis wherein an Other Than Honorable discharge is authorized, the medical board report is filed in the member's terminated health record. Additionally, the NDRB does not have the authority to change a narrative reason for separation to one indicating a medical disability or other medical related reasons. Only the BCNR can grant this type of narrative reason change.

Automatic Upgrades - There is no law or regulation that provides for an unfavorable discharge to be upgraded based solely on the passage of time or good conduct subsequent to leaving naval service.

Post-Service Conduct: The NDRB is authorized to consider post-service factors in the recharacterization of a discharge. Outstanding post-service conduct, to the extent such matters provide a basis for a more thorough understanding of the Applicant's performance and conduct during the period of service under review, is considered during Board reviews. Documentation to support a post-service conduct upgrade includes, but is not limited to: a verifiable continuous employment record; marriage and children's birth certificates (if applicable); character witness statements; documentation of community or church service; certification of non-involvement with civil authorities; evidence of financial stability or letters of good standing from banks, credit card companies, or other financial institutions; attendance at or completion of higher education (official transcripts); and documentation of a drug-free lifestyle. The Applicant is advised that completion of these items alone does not guarantee the upgrade of an unfavorable discharge, as each discharge is reviewed by the Board on a case-by-case basis to determine if post-service accomplishments help demonstrate in-service misconduct was an aberration and not indicative of the member's overall character.

Issues Concerning Bad-Conduct Discharges (BCD): Because relevant and material facts stated in a court-martial specification are presumed by the NDRB to be established facts, issues relating to the Applicant's innocence of charges for which he was found guilty cannot form a basis for relief. With respect to a discharge adjudged by a special court-martial, the action of the NDRB is restricted to upgrades based on clemency. Clemency is an act of leniency that reduces the severity of the punishment imposed. The NDRB does not have the jurisdictional authority to review a discharge or dismissal resulting from a general court-martial.

Board Membership: The names and votes of the members of the NDRB Board are recorded on the original of this document and may be obtained from the service records by writing to:

Secretary of the Navy Council of Review Boards
Attn: Naval Discharge Review Board
720 Kennon Street SE Rm 309
Washington Navy Yard DC 20374-5023