

ex-Pvt, USMC

CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130416

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

Narrative Reason for Discharge: (per DD 214) MISCONDUCT

Authority for Discharge: (per DD 214) MARCORSEPMAN 6210.5 [DRUGS]

Applicant's Request: Characterization change to: GENERAL (UNDER HONORABLE CONDITIONS)

Narrative Reason change to: NONE REQUESTED

SUMMARY OF SERVICE

Prior Service:

Inactive: USMCR (DEP) 20000725 - 20010729 COG Active: NONE

Pre-Service Drug Waiver: NFIR

Period of Service Under Review:

Date of Current Enlistment: 20010730

Age at Enlistment: 18

Period of Enlistment: 5 Years 0 Months

Date of Discharge: 20060622

Highest Rank: LANCE CORPORAL

Length of Service: 04 Year(s) 10 Month(s) 24 Day(s)

Education Level: 12

AFQT: 92

MOS: 6312

Proficiency/Conduct Marks (# of occasions): 4.0 (NFIR) / 3.8 (NFIR) Fitness Reports: NOT APPLICABLE

Awards and Decorations (per DD 214): Rifle MM SDR (2) GWOTEM GWOTSM NDSM PUC LOA

Periods of UA: 20020220-20020221, 2 days / CONF: NONE

NJP: 3

- 20031002: Article 92 (Failure to obey order or regulation, underage drinking)
Article 111 (Drunken or reckless operation of a vehicle, aircraft, or vessel)
Awarded: FOP RIR RESTR Suspended: NONE RIR RESTR
- 20050816: Article 112a (Wrongful use, possession, etc. of controlled substances)
Awarded: FOP RIR RESTR EPD Suspended: FOP
- 20060302: Article 112a (Wrongful use, possession, etc. of controlled substances, marijuana 24 ng/mL)
Awarded: FOP RIR RESTR EPD Suspended: FOP

SCM: NONE SPCM: NONE CC: NONE

Retention Warning Counseling: 2

- 20020305: For Article 92 (going out of bounds without authorization)
- 20021003: For Article 92 (consumption of alcohol under the legal age, and your alcohol-related incident, specifically driving under the influence with a BAC of .04)

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. The Marine Corps Separation and Retirement Manual, (MCO P1900.16F), effective 1 September 2001 until Present, Paragraph 6210, MISCONDUCT.

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.

Key: NFIR - Not found in record RESTR - Restriction NJP - Nonjudicial punishment SCM - Summary court-martial
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DEPARTMENT OF THE NAVY
NAVAL DISCHARGE REVIEW BOARD (NDRB)
DISCHARGE REVIEW DECISIONAL DOCUMENT

APPLICANT'S ISSUES

1. The Applicant seeks an upgrade to receive service benefits.
2. The Applicant contends youth and immaturity were contributing factors in his misconduct.
3. The Applicant contends his post-service conduct is worthy of consideration for an upgrade.

DECISION

Date: 20131114 DOCUMENTARY REVIEW Location: WASHINGTON D.C. Representation: NONE

By a vote of 5-0 the Characterization shall remain UNDER OTHER THAN 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 two 6105 counseling warnings and three nonjudicial punishments (NJP's) for violations of the Uniform Code of Military Justice (UCMJ): Article 92 (Failure to obey order or regulation, 1 specification), Article 111 (Drunken or reckless operation of a vehicle, aircraft, or vessel, 1 specification), and Article 112a (Wrongful use, possession, etc. of controlled substances, 2 specifications). The Applicant acknowledged his complete understanding of the Marine Corps Policy Concerning Illegal Use of Drugs on 24 July 2000. Based on the Article 112a violations, processing for administrative separation is mandatory. When notified of administrative separation processing using the administrative board procedure, the Applicant exercised his right to consult with a qualified counsel but waived his rights to submit a written statement and request an administrative board.

Issue 1: (Nondecisional) The Applicant seeks an upgrade to receive 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. The NDRB is only authorized to review the propriety and equity of a discharge.

Issue 2: (Decisional) (Equity) RELIEF NOT WARRANTED. The Applicant contends youth and immaturity were contributing factors in his misconduct. The NDRB recognizes that many of our servicemembers are young at the time they enlist, however, most still manage to serve honorably. While some members may be less mature than others, the NDRB does not view a member's claim of immaturity to be a mitigating factor or a sufficient reason for misconduct. Relief denied.

Issue 3: (Decisional) (Equity) RELIEF NOT WARRANTED. The Applicant contends his post-service conduct is 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 a personal statement, evidence of continuous employment, and one character reference. The Applicant could have provided documentation as detailed in the *Post-Service Conduct* paragraph in the Addendum, however, 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 documentation submitted by the Applicant does not demonstrate if in-service misconduct was an aberration. The characterization 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 UNDER OTHER THAN 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