

ex-Pvt, USMC

## CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130508

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 6210.3 [PATTERN OF MISCONDUCT]

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

Narrative Reason change to: NONE REQUESTED

## SUMMARY OF SERVICE

## Prior Service:

Inactive: USMCR (DEP) 20090901 - 20091130 COG Active: NONE

## Period of Service Under Review:

Date of Current Enlistment: 20091201

Age at Enlistment: 20

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20110323

Highest Rank: PRIVATE FIRST CLASS

Length of Service: 01 Year(s) 03 Month(s) 23 Day(s)

Education Level: 12

AFQT: 73

MOS: NONE

Proficiency/Conduct Marks (# of occasions): 4.0 (3) / 4.1 (3) Fitness Reports: NOT APPLICABLE

Awards and Decorations (per DD 214): Rifle SS NDSM

Periods of CONF: NONE

NJP: 2

- 20101122: Article 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer, on or about 0628, 20101118, wrongfully disobeyed lawful order from SSgt H\_ by failing to get up at 0545)  
Awarded: FOP RESTR EPD Suspended: RESTR EPD

- 20110222: Article 86 (Absence without leave, 2 specifications)  
Specification 1: Fail to go to physical therapy on 20110214  
Specification 2: Fail to go to doctor appointment on 20110215  
Article 107 (False official statements, false official statement that he had an appointment for physical therapy)  
Awarded: RIR FOP RESTR EPD Suspended: FOP

SCM: NONE SPCM: NONE CC: NONE

Retention Warning Counseling: 5

- 20100317: For your assignment to Student Administration Company to recover from a torn ACL.
- 20100914: For your recent violation of Article 92 of the UCMJ. In that you failed to obey orders and regulations. SNM lied, failed to complete his assigned exercises at ATC, and did not comply with staff requests because he did not feel like doing them.
- 20101122: For your recent NJP violation of Article 91 of the UCMJ.

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

- 20110215: For willfully disobeying Student Administration Company rules and regulations by returning to the rack after reveille, a violation of Article 92, UCMJ.
- 20110223: For violation of Article 86 of the UCMJ. You did not attend a scheduled follow up appointment with your doctor. You stated you made a conscious decision to do so because, "you didn't want to attend" the appointment. Additionally, you have been identified on weekly status reports as consistently being non-compliant or exerting minimal to no effort while attending athletic training appointments. Over the past few months, your performance across the board has been unsatisfactory.

**TYPES OF DOCUMENTS SUBMITTED/REVIEWED**

**Related to Military Service:**

DD 214:  Service/Medical Record:  Other Records:

**Related to Post-Service Period:**

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

**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.

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

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

**APPLICANT'S ISSUES**

1. The Applicant seeks Department of Veterans Affairs (VA) benefits.
2. The Applicant contends his nonjudicial punishments (NJPs) were from him following doctor's orders.

**DECISION**

Date: 20131121 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 Applicant's record of service included five 6105 counseling warnings and two nonjudicial punishments (NJPs) for violations of the Uniform Code of Military Justice (UCMJ): Article 86 (Absence without leave, 2 specifications: Fail to go to physical therapy and Fail to go to doctor appointment), Article 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer, wrongfully disobeyed lawful order from SSgt H\_ by failing to get up at 0545), and Article 107 (False official statements, false official statement that he had an appointment for physical therapy). Based on the offenses committed by the Applicant, his command administratively processed him for separation. When notified of administrative separation processing using the administrative board procedure, the Applicant waived his rights to consult with a qualified counsel, submit a written statement, and request an administrative board.

Issue 1: (Nondecisional) The Applicant seeks VA 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.

Issue 2: (Decisional) (Propriety/Equity) **RELIEF NOT WARRANTED.** The Applicant contends his NJPs were from him following doctor's orders. The record of evidence clearly shows the Applicant waived his rights to trial by court-martial and an administrative separation board. If the Applicant felt he was mistakenly charged with a crime, it was his obligation to contest those charges at the time they were made. During a trial or administrative separation board, he would have had the opportunity to mount a defense against the charges. The Applicant submitted medical records to support his claim. In particular, the Applicant submitted a document from his doctor that states he will need an additional 30-45 minutes in the morning upon waking up to warm up his knee. This letter was written four days after his misconduct at which he was found guilty at his first NJP. In addition, this letter did not instruct the Applicant to remain in the rack for a certain period after waking up. Further, the documents submitted by the Applicant do not show that the ATC/SMART clinic was going against doctor's orders or not providing adequate physical therapy. However, his service record clearly shows that he consistently disregarded orders from combat instructors, athletic trainers, and those available to support his rehabilitation and development. The NDRB discerned no impropriety or inequity in the Applicant's separation proceedings and determined his discharge was warranted, proper, and equitable. Relief denied.

Summary: After a thorough review of the available evidence, to include the Applicant's summary of service, medical and 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