

, ex-ITSR, USN

**CURRENT DISCHARGE AND APPLICANT'S REQUEST**

Application Received: 20130508

Characterization of Service Received: (per DD 214) BAD CONDUCT

Narrative Reason for Discharge: (per DD 214) COURT-MARTIAL

Authority for Discharge: (per DD 214) MILPERSMAN 5815-010 [COURT-MARTIAL]

Applicant's Request: Characterization change to: GENERAL (UNDER HONORABLE CONDITIONS)  
Narrative Reason change to: NONE REQUESTED**SUMMARY OF SERVICE****Prior Service:**

Inactive: USNR (DEP) 20040309 - 20040414 COG      Active: NONE

**Period of Service Under Review:**

Date of Current Enlistment: 20040415

Age at Enlistment: 27

Period of Enlistment: 4 Years 12 MONTHS Extension

Date of Discharge: 20071002

Highest Rank/Rate: IT3

Length of Service: 03 Year(s) 05 Month(s) 18 Day(s)

Education Level: 12

AFQT: 70

Evaluation Marks: Performance: 2.0 (1)

Behavior: 2.0 (1)

OTA: 1.67

Awards and Decorations (per DD 214): MUC NDSM GWOTSM

Periods of UA: 20060131 - 20060215, 16 days; 20060529 - 20060531, 3 days; 20060601 - 20061220, 203 days

CONF: 20061220 - 20070125, 36 days

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

SPCM: 1

- 20070118: Article 86 (Absence without leave, 3 specifications)

Specification 1: On or about, 20060131 - 20060215, 16 days

Specification 2: On or about, 20060529 - 20060531, 3 days

Specification 3: On or about, 20060601 - 20061220, 203 days

Article 87 (Missing movement, 2 specifications)

Specification 1: On or about, 20060201 miss the movement of USS JOHN C. STENNIS

Specification 2: On or about, 20060530 miss the movement of USS JOHN C. STENNIS

Article 92 (Failure to obey order or regulation, on or about, November or December 2005, failed to sit down in the LPO's Office, to stop walking, and to stand at attention)

Article 112a (Wrongful use, possession, etc., of a controlled substance, 2 specifications)

Specification 1: On or about, 20060511, wrongfully use marijuana

Specification 2: On or about, 20061222, wrongfully use marijuana

Sentence: BCD RIR E-1 CONF 3 MONTHS Suspended: CONF 45 DAYS

Key: NFIR - Not found in record  
SPCM - Special court-martial  
CONF - ConfinementRESTR - Restriction  
FOP - Forfeiture of pay  
CC - Civilian convictionNJP - Nonjudicial punishment  
RIR - Reduction in rank  
CCU - Correctional Custody UnitSCM - Summary court-martial  
EPD - Extra duties  
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 Naval Military Personnel Manual, (NAVPERS 15560C), Change 12, effective 19 September 2005 until 18 December 2007, Article 5815-010, EXECUTING A DISHONORABLE OR BAD CONDUCT DISCHARGE.

B. Secretary of the Navy Instruction 5420.174D of 22 December 2004, Naval Discharge Review Board (NDRB) Procedures and Standards, Part IV, Para 403m(7)(a), Presumption Concerning Court-Martial Specifications.

**Key:** NFIR - Not found in record  
 SPCM - Special 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 contends his misconduct was due to the lack of good leadership in his command.
2. The Applicant contends his family hardship led to his misconduct.

**DECISION**

Date: 20131121 DOCUMENTARY REVIEW

Location: WASHINGTON D.C. Representation: NONE

**By a vote of 5-0 the Characterization shall remain BAD CONDUCT.**

**By a vote of 5-0 the Narrative Reason shall remain COURT-MARTIAL.**

**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. With respect to a discharge adjudged by a court-martial case, 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. In response to the Applicant's clemency request, relevant and material facts stated in a court-martial specification are presumed by the NDRB to be established facts. The Applicant's case was considered under the pertinent standards of equity to determine if any factors in this particular case merited clemency. The Applicant's record of service included one special court-martial (SPCM) for violations of the UCMJ: Article 86 (Absence without leave, 3 specifications: Specification 1: On or about, 20060131 - 20060215, 16 days; Specification 2: On or about, 20060529 - 20060531, 3 days; and Specification 3: On or about, 20060601 - 20061220, 203 days), Article 87 (Missing movement, 2 specifications of missing the movement of USS JOHN C. STENNIS), Article 92 (Failure to obey order or regulation, failed to sit down in the LPO's Office, to stop walking, and to stand at attention), and Article 112a (Wrongful use, possession, etc., of a controlled substance, 2 specifications of wrongfully use marijuana). The Applicant's service record documents a punitive conviction and punishment, as adjudged by a Special Court-Martial, on 18 January 2007. A qualified legal defense counsel represented the Applicant throughout the trial by Special Court-Martial process. Given the facts of the case, the Special Court-Martial awarded the Applicant a Bad Conduct Discharge and confinement for a period of 3 months, with 45 days suspended due to his pre-trial agreement. The case was submitted for review to the U.S. Navy-Marine Corps Court of Criminal Appeals without assignments of error, and the findings were affirmed on 18 July 2007. The Navy Marine Corps Appellate Leave Activity then executed the Bad Conduct Discharge.

Issues 1-2: (Decisional) (Clemency) RELIEF NOT WARRANTED. The Applicant contends his misconduct was due to the lack of good leadership in his command. The Applicant further contends his family hardship led to his misconduct. In reviewing discharges, the NDRB presumes regularity in the conduct of Government affairs unless there is substantial credible evidence to rebut the presumption, to include evidence submitted by the Applicant. With respect to a discharge adjudged by a court-martial case, 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. In response to the Applicant's clemency request, relevant and material facts stated in a court-martial specification are presumed by the NDRB to be established facts. The Applicant's case was considered under the pertinent standards of equity to determine if any factors in this particular case merited clemency. The NDRB found the evidence of record did not contain sufficient mitigating or extenuating factors to offset the seriousness of the offenses for which the discharge was awarded. While the Applicant may feel that his family difficulties and lack of good leadership in his command were contributing factors to his misconduct, but they do not mitigate his disobedience of the orders and directives that regulate good order and discipline in the Naval Service. Extended periods of unauthorized absences to include a period of 203 days, missing movement, failure to obey orders and regulations, and the wrongful use of marijuana on multiple occasions were all conscious decisions to violate the tenets of honorable and faithful service. Clemency 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 clemency was not warranted. Therefore, the awarded characterization shall remain BAD CONDUCT and the narrative reason for separation shall remain COURT-MARTIAL. The Applicant remains eligible for a personal appearance hearing for 15 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