

ex-SR, USN

## CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130815

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

Narrative Reason for Discharge: (per DD 214) PATTERN OF MISCONDUCT

Authority for Discharge: (per DD 214) MILPERSMAN 1910-140 [PATTERN OF MISCONDUCT]

Applicant's Request: Characterization change to: HONORABLE

Narrative Reason change to: NONE REQUESTED

## SUMMARY OF SERVICE

## Prior Service:

Inactive: USNR (DEP) 20000613 - 20000628 COG Active: NONE

## Period of Service Under Review:

Date of Current Enlistment: 20000629

Age at Enlistment: 18

Period of Enlistment: 4 Years NO Extension

Date of Discharge: 20040203

Highest Rank/Rate: SN

Length of Service: 03 Year(s) 07 Month(s) 05 Day(s)

Education Level: 12

AFQT: 64

Evaluation Marks: Performance: 3.0 (3)

Behavior: 2.3 (3)

OTA: 2.67

Awards and Decorations (per DD 214): NDSM SDDR (2) OSR (2)

Periods of UA/CONF: NONE

NJP: 7

- 20001211: Article 92 (Failure to obey order or regulation)  
Awarded: RESTR EPD Suspended: NONE

- 20030307: Article 92 (Failure to obey order or regulation, 2 specifications)  
Awarded: RIR RESTR EPD Suspended: NONE [Extracted from Commanding Officer's letter dated 20031227]

- 20030406: Article 128 (Assault, 2 specifications)  
Awarded: RESTR EPD RIR Suspended: NONE

- 20030424: Article 86 (Absence without leave)  
Article 92 (Failure to obey order or regulation)  
Awarded: FOP CBW RIR Suspended: FOP CBW RIR

- 20031126: Article 128 (Assault)  
Article 134 (General Article - drunk and disorderly conduct)  
Awarded: RIR FOP RESTR EPD Suspended: NONE

- 20031216: Article 128 (Assault)  
Article 134 (General Article - drunk and disorderly conduct)  
Awarded: RESTR EPD Suspended: NONE [Extracted from Evaluation Report and Counseling Record dated 20031231]

- 20031227: Article 92 (Failure to obey order or regulation)  
Awarded: CBW Suspended: NONE

Key: NFIR - Not found in record  
SPCM - Special court-martial  
CONF - Confinement

RESTR - Restriction  
FOP - Forfeiture of pay  
CC - Civilian conviction

NJP - Nonjudicial punishment  
RIR - Reduction in rank  
CCU - Correctional Custody Unit

SCM - Summary court-martial  
EPD - Extra duties  
CBW - Confinement on bread and water

SCM: NONE      SPCM: NONE      CC: NONE

Retention Warning Counseling: 1

- 20010122: For failure to obey order or regulation

**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. Naval Military Personnel Manual, (NAVPERS 15560C), re-issued October 2002, effective 22 August 2002 until 25 April 2005, Article 1910-140, SEPARATION BY REASON OF MISCONDUCT - PATTERN OF 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  
 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 contends his post-service conduct warrants consideration for an upgrade.

## DECISION

Date: 20140312 DOCUMENTARY REVIEW

Location: WASHINGTON D.C. Representation: NONE

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 **PATTERN OF 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 NAVPERS 1070/613 (Page 13) warning and seven nonjudicial punishments (NJPs) for violations of the Uniform Code of Military Justice (UCMJ): Article 92 (Failure to obey order or regulation, 5 specifications), Article 86 (Absence without leave), Article 128 (Assault, 4 specifications), and Article 134 (General Article - drunk and disorderly conduct, 2 specifications). Based on the offenses committed by the Applicant, his command administratively processed him for separation. When notified of administrative separation processing using the notification procedure, the Applicant waived his rights to consult with a qualified counsel and submit a written statement. The Applicant was not entitled to an administrative board.

Issue 1: (Decisional) (Equity) **RELIEF NOT WARRANTED**. The Applicant suggests his post-service conduct warrants 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 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 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 **PATTERN OF 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