

, ex-PFC, USMC

CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20131118

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

Narrative Reason for Discharge: (per DD 214) WEIGHT CONTROL FAILURE

Authority for Discharge: (per DD 214) MARCORSEPMAN 6215 [WEIGHT CONTROL FAILURE]

Applicant's Request: Characterization change to: HONORABLE

Narrative Reason change to: NONE REQUESTED

SUMMARY OF SERVICE

Prior Service:

Inactive: USMCR (DEP) 20100519 - 20100919 COG Active: NONE

Period of Service Under Review:

Date of Current Enlistment: 20100920

Age at Enlistment: 18

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20120529

Highest Rank: PRIVATE FIRST CLASS

Length of Service: 01 Year(s) 08 Month(s) 10 Day(s)

Education Level: 12

AFQT: 35

MOS: 0621

Proficiency/Conduct Marks (# of occasions): 4.3 (5) / 4.2 (5) Fitness Reports: NOT APPLICABLE

Awards and Decorations (per DD 214): Rifle MM GWOTSM NDSM

Periods of UA/CONF: NONE

NJP: NONE SCM: NONE SPCM: NONE CC: NONE

Retention Warning Counseling: 1

- 20120130: For unsatisfactory progress during your assignment to the Body Composition Program (BCP) as evidenced by your weigh-in on 21020106. You were officially assigned to a six-month BCP on 20110725. Your start height was recorded at 63 inches, your start weight was 157 pounds, and your body fat was measured at 28 percent. Your prescribed weight loss goals were losing 5 pounds per month or 3 percent body fat. Your four month weigh-in on 20120106, your height was recorded at 63 inches and weigh-in at 167 pounds. Your body fat percent was measured at 29 percent body fat.

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 6215, WEIGHT CONTROL FAILURE, 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 contends the Body Composition Program (BCP) was not properly conducted, which led to physical and emotional stress that directly contributed to her discharge.
2. NDRB Issue: The Applicant's discharge was inequitable.

DECISION

Date: 20140702 DOCUMENTARY REVIEW Location: WASHINGTON D.C. Representation: NONE

By a vote of 3-2 the Characterization shall change to HONORABLE.

By a vote of 5-0 the Narrative Reason shall remain WEIGHT CONTROL FAILURE.

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 her discharge and the discharge process to ensure her discharge met the pertinent standards of equity and propriety. The Applicant's record of service included one 6105 counseling warning. Based on her inability to remain within Marine Corps height and weight standards, her command administratively processed her for separation. The NDRB did not have the Applicant's administrative separation package to determine whether or not the Applicant waived her rights to consult with a qualified counsel, submit a written statement, and request a General Court-Martial Convening Authority review.

Issue 1: (Decisional) (Propriety) RELIEF NOT WARRANTED. The Applicant contends the BCP was not properly conducted, which led to physical and emotional stress that directly contributed to her discharge. The NDRB reviews the propriety and equity of an Applicant's discharge individually, on a case-by-case basis. If such a review reveals an impropriety or inequity, relief is in order. Regulations permit relief on equitable grounds if the Applicant's discharge is inconsistent with standards of discipline of the Naval Service. Based upon available records, nothing indicates that the Applicant's discharge was in any way inconsistent with the standards of discipline in the United States Marine Corps. A preponderance of the evidence reviewed supports the conclusion that the Applicant was a weight control failure, that BCP procedures were followed, and that separation was warranted. Relief denied.

Issue 2: (NDRB Issue) (Decisional) (Equity) RELIEF WARRANTED. Per paragraph 6215 of the Marine Corps Separation and Retirement Manual, characterization of service for administrative separations due to Weight Control Failure will be Honorable or General (Under Honorable Conditions) as warranted by the member's service record. During the Applicant's 20 months of service, she had no misconduct or other significant negative aspects of service to warrant a General discharge. Therefore, the NDRB voted 3-2 to upgrade her characterization of service to Honorable. Relief granted.

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 but not equitable. Therefore, the awarded characterization of service shall change to HONORABLE but the narrative reason for separation shall remain WEIGHT CONTROL FAILURE. The Applicant remains eligible for a personal appearance hearing for a period of fifteen years from the date of her 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