

ex-Pvt, USMC

## CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20131203

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

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

Authority for Discharge: (per DD 214) MARCORSEPMAN 1105 [COURT-MARTIAL]

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

Narrative Reason change to: SECRETARIAL DISCRETION

## SUMMARY OF SERVICE

## Prior Service:

Inactive: USMCR (DEP) 19970219 - 19970629 COG

Active: USMC 19970630 - 20010117 HON

## Period of Service Under Review:

Date of Current Enlistment: 20010118

Age at Enlistment: 23

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20050527

Highest Rank: SERGEANT

Length of Service: 04 Years 04 Months 10 Days

Education Level: 12

AFQT: NFIR

MOS: 1142

Proficiency/Conduct Marks (# of occasions): 4.5 (NFIR) / 4.4 (NFIR) Fitness Reports: AVAILABLE

Awards and Decorations (per DD 214): Rifle EX (2) Pistol MM NMCAM (3) GCM NDSM SDDR NUC COC

Period of UA: NONE

NJP: NONE

SCM: NONE

CC: NONE

Retention Warning Counseling: NONE

SPCM: 1

- 20030417: Article 107 (False official statement, 4 specifications)

Sentence: RIR E-1 FOP CONF 9 months (20030110-20030825, 227 days) BCD

## 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 1105, DISCHARGE ADJUDGED BY SENTENCE OF COURT-MARTIAL, 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 IV, Para 403m(7)(a), Presumption Concerning Court-Martial Specifications.

C. 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  
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

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

**APPLICANT'S ISSUES**

1. The Applicant contends his in-service conduct and performance warrants an upgrade.
2. The Applicant contends Post-Traumatic Stress Disorder (PTSD), delusional disorder, and depressive disorder warrant clemency.
3. The Applicant seeks clemency based on post-service conduct and accomplishments.

**DECISION**

Date: 20140820 PERSONAL APPEARANCE HEARING Location: WASHINGTON D.C. Representation: Civilian Counsel

**By a vote of 3-2 the Characterization shall change to UNDER OTHER THAN HONORABLE CONDITIONS.**

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

**DISCUSSION**

As a result of the Applicant's claim of PTSD, in accordance with U.S. Code, Title X, Section 1553(d)(1), the Naval Discharge Review Board reviewed the Applicant's record to see if he deployed in support of a contingency operation and was, as a consequence of that deployment, diagnosed with either PTSD or Traumatic Brain Injury. A review of his record revealed that he did not deploy in support of a contingency operation, and so his case did not warrant an expedited review in accordance with U.S. Code, Title X, Section 1553(d)(1). The NDRB, however, did include a psychiatrist on the board.

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 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 Applicant's record of service in his second enlistment included one special court-martial (SPCM) for violations of the UCMJ: Article 107 (False official statements, 4 specifications). The Applicant's service record documents a punitive conviction and punishment, as adjudged by a Special Court-Martial, on 17 April 2003. 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, reduction to the pay grade of E-1, forfeiture of \$767 pay per month for nine months, and confinement for a period of nine months. The Convening Authority approved the sentence as adjudged. The case was submitted for review to the U.S. Navy-Marine Corps Court of Criminal Appeals without assignments of error; it was reviewed and the findings were affirmed on 14 March 2005.

Issue 1: (Decisional) (Clemency) **RELIEF NOT WARRANTED.** The Applicant contends his in-service conduct and performance warrants an upgrade. The Applicant received an Honorable characterization of service for his first enlistment from June 1997 to January 2001. Each period of enlistment is an independent obligation and characterization is determined for that specific period of time. During his second enlistment, he was found guilty of violating UCMJ Article 107 at a Special Court-Martial and sentenced to a Bad Conduct Discharge. Based on the Applicant's record of service in his second enlistment, 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. Relief denied.

Issue 2: (Decisional) (Clemency) **RELIEF NOT WARRANTED.** The Applicant contends PTSD, delusional disorder, and depressive disorder warrant clemency. A review of the Applicant's record did reveal that he was evaluated by a licensed clinical psychologist on 11 February 2013 and diagnosed with PTSD, depressive disorder, and delusional disorder. Despite the psychiatric diagnosis, proper medical authority determined the Applicant was able to appreciate the nature, quality, and wrongfulness of his conduct at the time of his criminal conduct. Though the Applicant may feel that PTSD, delusional disorder, and depressive disorder mitigate his misconduct, the record reflects willful misconduct and did not show that he was either not responsible for his conduct or that he should not be held accountable for his actions. The NDRB determined PTSD, delusional disorder, and depressive disorder did not mitigate his misconduct, and clemency is not warranted. Relief denied.