

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

**APPLICANT'S ISSUES**

1. The Applicant contends his discharge was based on an isolated incident with only five months remaining on his enlistment.
2. The Applicant contends he completed his entire four year enlistment with a Good Conduct Medal and recommendations for retention from his direct superiors.
3. The Applicant contends his post-service conduct is worthy of an upgrade.

**DECISION**

Date: 20140717    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 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 two 6105 counseling warnings and two nonjudicial punishments (NJPs) for violations of the Uniform Code of Military Justice (UCMJ): Article 112a (Wrongful use, possession, etc. of controlled substances) and Article 128 (Assault). The Applicant did not have a pre-service drug waiver prior to entering the Marine Corps, and acknowledged his complete understanding of the Marine Corps Policy Concerning Illegal Use of Drugs on 06 February 1996. Based on the Article 112a violation, processing for administrative separation is mandatory. When notified of administrative separation processing using the administrative board procedure, the Applicant exercised his rights to consult with a qualified counsel, submit a written statement, and request an administrative board. The Applicant's administrative board unanimously found that the preponderance of the evidence supported the accusations against him and that separation Under Other Than Honorable Conditions was warranted.

Issue 1: (Decisional) (Propriety/Equity) **RELIEF NOT WARRANTED.** The Applicant contends his discharge was based on an isolated incident with only five months remaining on his enlistment. Despite a servicemember's prior record of service, certain serious offenses warrant separation from the Marine Corps to maintain proper order and discipline. Violation of Article 112a is one such offense requiring mandatory processing for administrative separation regardless of grade, performance, recommendations from his chain of command, or time in service. This usually results in an unfavorable characterization of discharge or, at a maximum, a punitive discharge and possible confinement if adjudicated and awarded as part of a sentence by a special or general court-martial. However, his command did not pursue a punitive discharge but opted instead for the more lenient administrative discharge. Further, administrative discharge processing is a separate and distinct process from punitive proceedings such as NJP or court-martial. Administrative discharge processing is administrative in nature and not considered a form of punishment. As such, the Applicant's inference that he was inequitably punished twice for the same misconduct is erroneous. The NDRB found the characterization of the Applicant's discharge was equitable and consistent with the characterization of discharge given others in similar circumstances. Relief denied.

Issue 2: (Decisional) (Propriety/Equity) **RELIEF NOT WARRANTED.** The Applicant contends he completed his entire four year enlistment with a Good Conduct Medal and recommendations for retention from his direct superiors. The Applicant received a Good Conduct Medal for his first three years of service in his enlistment without misconduct. The Article 112a violation later in his enlistment, however, required mandatory processing for administrative separation. Since the Applicant was administratively separated and not separated upon expiration of enlistment or fulfillment of service obligation, the characterization of service is determined by the quality of the member's total performance of duty and conduct during the current enlistment, including the reason for separation. Other considerations shall be given to the member's length of service, grade, aptitude, physical and mental condition, and recommendations from his chain of command. Based on the Applicant's

record of service, the NDRB determined the Applicant engaged in conduct involving one or more acts or omissions that constituted a significant departure from the conduct expected of members of the Naval Service, and the awarded characterization of service was warranted. Further, the Applicant's contention that his alcoholism mitigates his misconduct does not warrant an upgrade. Alcohol consumption is never a rationale or an acceptable excuse for inappropriate conduct, misconduct, or poor judgment. There is nothing in his record to show that he was not responsible for his actions or should not be held accountable for his misconduct. Finally, although the Applicant was discharged on the last day of his enlistment, he was still properly discharged Under Other Than Honorable Conditions for Misconduct (Drug Abuse) and not for Completion of Required Active Service. A servicemember does not reach the end of his enlistment until 2359 on the last day of his enlistment. The NDRB determined his discharge was proper and equitable. Relief denied.

Issue 3: (Decisional) (Equity) RELIEF NOT WARRANTED. The Applicant contends his post-service conduct is worthy of 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, evidence of financial stability and continuous employment, a copy of his criminal background check, training certificates, and four character references. 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, 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.

#### PERTINENT REGULATION/LAW

- A. Paragraph 6210, MISCONDUCT, of the Marine Corps Separation and Retirement Manual, (MCO P1900.16E), effective 31 January 1997 until 31 August 2001.
- 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.

, ex-Pvt, USMC

**CURRENT DISCHARGE AND APPLICANT'S REQUEST**

Application Received: 20140124

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 6210.5 [DRUGS]

Applicant's Request: Characterization change to: HONORABLE

Narrative Reason change to: NONE REQUESTED

**SUMMARY OF SERVICE****Prior Service:**

Inactive: USMCR (DEP) 19960207 - 19960303 COG      Active: NONE

Pre-Service Drug Waiver: NO

**Period of Service Under Review:**

Date of Current Enlistment: 19960304

Age at Enlistment: 20

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20000303

Highest Rank: LANCE CORPORAL

Length of Service: 04 Year(s) 00 Month(s) 00 Day(s)

Education Level: 12

AFQT: 71

MOS: 6484

Proficiency/Conduct Marks (# of occasions): 4.4 (14) / 4.1 (14)      Fitness Reports: NOT APPLICABLE

Awards and Decorations (per DD 214): Rifle MM NATO AFSM SDR GCM

Periods of UA/CONF: NONE

NJP: 2

- 19990405: Article 128 (Assault)

Awarded: RESTR EPD FOP RIR    Suspended: RESTR

- 19991007: Article 112a (Wrongful use, possession, etc. of controlled substances, THC 22 ng/mL)

Awarded: RIR FOP    Suspended: NONE

SCM: NONE      SPCM: NONE      CC: NONE

Retention Warning Counseling: 2

- 19980203: For alcohol-related incident, specifically, DWI with a BAC of .19 on 19971018.

- 19990115: For alcohol-related incident, specifically, disorderly conduct at a civilian establishment on 19990101.

**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: 

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

**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