

[REDACTED], ex-Pvt, USMC

CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130319

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 6210.3 [PATTERN OF MISCONDUCT]

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

Narrative Reason change to: NONE REQUESTED

SUMMARY OF SERVICE**Prior Service:**

Inactive: USMCR (DEP) 20040630 - 20050626 COG Active: NONE

Period of Service Under Review:

Date of Current Enlistment: 20050627

Age at Enlistment: 20

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20080131

Highest Rank: PRIVATE FIRST CLASS

Length of Service: 02 Year(s) 07 Month(s) 05 Day(s)

Education Level: 12

AFQT: 36

MOS: 3531

Proficiency/Conduct Marks (# of occasions): 4.0 (6) / 3.4 (7) Fitness Reports: NOT APPLICABLE

Awards and Decorations (per DD 214): Rifle SS GWOTSM ICM NDSM SDDR

Periods of CONF: NONE

NJP: 2

- 20060303: Article 85 (Desertion, 20051227-20060224, 60 days)
Awarded: RIR FOP RESTR Suspended: NONE

- 20061206: Article 128 (Assault)
Awarded: RIR FOP RESTR Suspended: NONE

SCM: 1

- 20071108: Article 92 (Failure to obey order or regulation)
Article 109 (Property other than military property of the United States - waste, spoilage, or destruction)
Article 129 (Burglary)
Article 134 (General Article by communicating a threat, 2 specifications)
Sentence: RIR E-1 FOP HARD LABOR RESTR

SPCM: NONE CC: NONE

Retention Warning Counseling: 2

- 20061121: For your inability to adapt to the demands of military service. On 20061108, I was evaluated in the Psychology Department at the Naval Hospital Cherry Point. I was diagnosed with Partner Relational Problems, Occupational Problems, and an Adjustment Disorder with Depressed Mood that at this time is not considered to be of such severity as to warrant separation from the service. I was also diagnosed with Personality Disorder Not Otherwise Specified - Anti-Social traits, which may impact my suitability for duty. Further psychological evaluation would be needed before I could definitely be declared as such.

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

- 20070823: For failure to follow an order or regulation, conduct prejudicial to good order and discipline, and not in compliance with the high standards of the Marine Corps. Specifically, sending threatening and deceptive correspondence to my spouse and making statements that I will not follow lawful orders of my Commanding Officer. My lack of judgment, integrity, and unprofessional conduct in handling marital affairs continues to be a problem for me and an area of concern for my chain of command. I understand that the poor decisions I make are not in compliance with the Core Values that make me a Marine: Honor, Courage, and Commitment.

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 6210, MISCONDUCT, 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
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 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 seeks Department of Veterans Affairs (VA) benefits.
2. The Applicant contends the assault was not his fault.
3. The Applicant contends his mental issues led to his misconduct.
4. The Applicant contends untreated Post-Traumatic Stress Disorder (PTSD) led to his misconduct.
5. The Applicant contends his post-service conduct warrants an upgrade.

DECISION

Date: 20131121 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

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 included a member who is a physician, clinical psychologist, or psychiatrist. In accordance with section 1553 (d)(2), the service secretary expedited a final decision and accorded the case sufficient priority to achieve an expedited resolution. The Applicant deployed to Iraq in February 2007 in support of Operation IRAQI FREEDOM.

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 Applicant's record of service included two 6105 counseling warnings, two nonjudicial punishments (NJP) for violations of the Uniform Code of Military Justice (UCMJ): Article 85 (Desertion 20051227-20060224, 60 days) and Article 128 (Assault), and one summary court-martial (SCM) for violations of the UCMJ: Article 92 (Failure to obey order or regulation), Article 109 (Property other than military property of the United States - waste, spoilage, or destruction), Article 129 (Burglary), and Article 134 (General Article by communicating a threat, 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 administrative board procedure, the Applicant waived his rights to consult with a qualified counsel, submit a written statement, and request an administrative board.

Issue 1: (Nondecisional) The Applicant seeks VA 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.

Issue 2: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends the assault was not his fault. The record of evidence clearly shows the Applicant waived his rights to trial by court-martial and an administrative separation board. If the Applicant felt he was mistakenly charged with a crime, it was his obligation to contest those charges at the time they were made. During a trial or administrative separation board, he would have had the opportunity to mount a defense against the charges. The Applicant submitted no evidence to support his contention, therefore, the NDRB must rely upon the presumption of regularity in the conduct of Government affairs. Further, the service record contains a significant level of misconduct above and beyond the Applicant's Article 128 (Assault) violation. In addition to the Article 128 violation, violations of UCMJ Article 85, 92, 109, 129, and 134 are also considered serious offenses for which a punitive discharge is authorized. Relief denied.

Issue 3: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends his mental issues led to his misconduct. When reviewing a discharge, the NDRB does consider the extent to which a medical problem might affect an Applicant's performance and ability to conform to the military's standards of conduct and discipline. However, the NDRB does not consider the circumstances surrounding the Applicant's stated condition or diagnosis to be of sufficient nature to excuse the Applicant's misconduct. Relief denied.

Issue 4: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends untreated PTSD led to his misconduct. The record clearly shows the Applicant had significant misconduct prior to his deployment to Iraq. In addition, documents provided by the Applicant show that he was participating in a Men's Domestic Violence program prior to his deployment to Iraq in February 2007. Though the Applicant may feel that PTSD was the underlying cause of his misconduct, the record reflects the Applicant displayed willful and persistent misconduct by his desertion, assaults, failure to obey orders and regulations, destruction of military property, burglary, and communicating threats. In addition, the record shows the Applicant submitted a pre-trial agreement to plead guilty at a Summary Court-Martial and waive his administrative board if his pending Special Court-Martial was withdrawn. If the Applicant felt there were mitigating circumstances to his misconduct, it was his obligation to contest those charges at the time they were made. During a trial or administrative separation board, he would have had the opportunity to bring forth any mitigating circumstances. Regardless, the evidence of record did not show that the Applicant was either not responsible for his conduct or that he should not be held accountable for his actions. After an exhaustive review, the NDRB determined PTSD did not mitigate the Applicant's misconduct. Relief denied.

Issue 5: (Decisional) (Equity) RELIEF NOT WARRANTED. The Applicant contends his post-service conduct warrants 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 court documents showing he has primary custody of his daughter. 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 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.

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