



ex-LCpl, USMC

CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130305
 Characterization of Service Received: (per DD 214) GENERAL (UNDER HONORABLE CONDITIONS)
 Narrative Reason for Discharge: (per DD 214) COMPLETION OF REQUIRED ACTIVE SERVICE
 Authority for Discharge: (per DD 214) MARCORSEPMAN 1005 [COMPLETION OF REQUIRED ACTIVE SERVICE]

Applicant's Request: Characterization change to: HONORABLE
 Narrative Reason change to: NONE REQUESTED

SUMMARY OF SERVICE

Prior Service:

Inactive: USMCR (DEP) 20050406 - 20050911 COG Active: NONE

Period of Service Under Review:

Date of Current Enlistment: 20050912 Age at Enlistment: 18
 Period of Enlistment: 4 Years 0 Months
 Date of Discharge: 20090911 Highest Rank: LANCE CORPORAL
 Length of Service: 04 Year(s) 00 Month(s) 00 Day(s)
 Education Level: 12 AFQT: 34
 MOS: 0622
 Proficiency/Conduct Marks (# of occasions): 4.1 (8) / 3.9 (8) Fitness Reports: NOT APPLICABLE

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

Periods of UA/CONF: NONE

NJP: 2

- 20071015: Article 86 (Absence without leave, 1130, 20071003 - 0730, 20071004)
 Awarded: FOP RESTR EPD Suspended: RESTR EPD
- 20081003: Article 121 (Larceny and wrongful appropriation - steal a can of Skoal citrus blend from 7-Day Store)
 Awarded: RIR FOP RESTR EPD Suspended: NONE

SCM: NONE SPCM: NONE CC: NONE

Retention Warning Counseling: 1

- 20071022: For violation of UCMJ Article 86

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

PERTINENT REGULATION/LAW

A. Marine Corps Separation and Retirement Manual, (MCO P1900.16F), effective 1 September 2001 until Present, Paragraph 1005, DISCHARGE FOR EXPIRATION OF ENLISTMENT OR FULFILLMENT OF SERVICE OBLIGATION.

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

APPLICANT'S ISSUES

1. The Applicant contends he was innocent of being in an unauthorized absence (UA) status.
2. The Applicant contends that even though his Proficiency scores were high and Conduct scores were low, he rates an Honorable discharge.

DECISION

Date: 20131114 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 COMPLETION OF REQUIRED ACTIVE SERVICE.**

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 Applicant's record of service included one 6105 counseling warning and two nonjudicial punishments (NJP) for violations of the Uniform Code of Military Justice (UCMJ): Article 86 (Absence without leave) and Article 121 (Larceny and wrongful appropriation). The Applicant was discharged at the end of his obligated active service with a General characterization of service due to his average Conduct marks being below 4.0.

Issue 1: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends he was innocent of being UA. The Applicant specifically contends he had permission to be off for a court appearance. The record shows the Applicant waived his right to trial by court-martial and accepted NJP where he was found guilty of being absent without leave. Further, the record clearly shows he was counseled on 22 October 2007, which stated he was allowed to attend a court hearing at 0800 but did not return to work until the following day. Therefore, the NDRB determined the Applicant's contention was without merit. Relief denied.

Issue 2: (Decisional) (Propriety/Equity) RELIEF NOT WARRANTED. The Applicant contends that even though his Proficiency scores were high and Conduct scores were low, he rates an Honorable discharge. In accordance with Paragraph 1004 of the Marine Corps Separation and Retirement Manual, an Honorable characterization of service upon the expiration of active duty is appropriate when the quality of a Marine's service has met the standards of accepted conduct and performance of duty for military personnel. Therefore, characterization of service will be Honorable for Marines with average Proficiency marks of 3.0 or higher and average Conduct marks of 4.0 or higher. The Applicant completed his obligated service and his overall marks for Proficiency and Conduct were 4.1 and 3.9, respectively. After a thorough review of the records, supporting documents, facts, and circumstances unique to this case, the NDRB discerned no impropriety or inequity in the discharge action. 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 COMPLETION OF REQUIRED ACTIVE SERVICE. 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