

ex-Pvt, USMC

## CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130430  
 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, GENERAL (UNDER HONORABLE CONDITIONS, OR UNCHARACTERIZED)  
 Narrative Reason change to: REQUESTED, BUT NOT SPECIFIED

## SUMMARY OF SERVICE

## Prior Service:

Active: NONE

## Period of Service Under Review:

Date of Current Enlistment: 20011210 Age at Enlistment: 17 (PARENTAL CONSENT)  
 Period of Enlistment: 5 Years 0 Months  
 Date of Discharge: 20050126 Highest Rank: PRIVATE FIRST CLASS  
 Length of Service: 03 Year(s) 06 Month(s) 29 Day(s)  
 Education Level: 12 AFQT: 46  
 MOS: 1181  
 Proficiency/Conduct Marks (# of occasions): 3.5 (8) / 3.3 (8) Fitness Reports: NOT APPLICABLE

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

Periods of UA/CONF: NONE

Time Lost (per DD 214): 20040220-20040222, 3 days; 20040310-20040316, 6 days; 20040331-20040606, 66 days

NJP: 4

- 20020725: Article 86 (Absence without leave, failure to report to appointed place of duty at prescribed time - Physical training field)  
Awarded: RIR FOP RESTR EPD Suspended: NONE
- 20030418: Article 86 (Absence without leave, failure to report to appointed place of duty at prescribed time - Barracks)  
Awarded: FOP RESTR EPD Suspended: NONE
- 20030702: Article 86 (Absence without leave, failure to report to appointed place of duty at prescribed time)  
Article 92 (Failure to obey order or regulation, violation of Barracks Regulation - cigarette butts found in his room indicating that he was smoking)  
Awarded: FOP Suspended: FOP
- 20031001: Article 86 (Absence without leave, 2 specifications)  
Specification 1: Failure to report to appoint place of duty on 20030922 from 0530 until 1200.  
Specification 2: Failure to report to appoint place of duty on 20030922 from 0730 until 1330.  
Awarded: CONF 30 days Suspended: NONE

SCM: NONE

CC: NONE

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

SPCM: 1

- 20040521: Article 86 (Absence without leave, 3 specifications)
  - Specification 1: Wrongfully absent himself from place of duty from 20040220 to 20040223.
  - Specification 2: Failed to report to muster restriction at 0600 on 20040308.
  - Specification 3: Failed to report to muster restriction at 1800 on 20040308.
- Article 112a (Wrongful use, possession, etc., of controlled substances, 2 specifications)
  - Specification 1: Wrongfully use marijuana on or about 20040229 and on or about 20040310.
  - Specification 2: Wrongfully use marijuana on or about 20040321 and on or about 20040331.
- Sentence: BCD CONF 120 days FOP

Retention Warning Counseling: 8

- 20020715: For unauthorized absence from 1230-1400 on 20020711, 0445-730 on 20020712, and from 0445-0500 on 20020715.
- 20020905: For academic drop from the ATC course.
- 20021119: For unauthorized absence from mandatory study hall on 20021014 at 1800 and failure to obey order or regulation to be at study hall.
- 20030112: For unauthorized absence on 20030113 at 0530 from platoon physical training formation.
- 20030310: For failure to obey order or regulation and absence without leave.
- 20030416: For failure to report to appointed place of duty from 0715 on 20030408 to 0740.
- DATE UNREADABLE: For failure to report to appointed place of duty at prescribed time and violation of Barracks Regulation - cigarette butts found in his room indicating that he was smoking)
- 20030930: Failure to report to appointed place of duty on 20030922 from 0530 until 1200 and on 20030922 from 0730 until 1330.

**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. 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      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 seeks clemency to better his life and the life of his family.

## DECISION

Date: 20131121 DOCUMENTARY REVIEW Location: WASHINGTON D.C. Representation: NONE

**By a vote of 5-0 the Characterization shall remain BAD CONDUCT DISCHARGE.**

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

## 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 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 included eight 6105 counseling warnings, four nonjudicial punishments (NJPs) for violations of the Uniform Code of Military Justice (UCMJ): Article 86 (Absence without leave, 5 specifications) and Article 92 (Failure to obey order or regulation, 1 specification), and one special court-martial (SPCM) for violations of the UCMJ: Article 86 (Absence without leave, 3 specifications) and Article 112a (Wrongful use, possession, etc., of controlled substances, 2 specifications). The Applicant's service record documents a punitive conviction and punishment, as adjudged by a Special Court-Martial, on 21 May 2004. 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, forfeiture of \$795 pay per month for four months, and confinement for a period of 120 days. The Convening Authority approved the sentence as adjudged but suspended all confinement in excess of time served (60 days) in accordance with the terms of a pretrial agreement. The case was submitted for review to the U.S. Navy-Marine Corps Court of Criminal Appeals without assignments of error and the findings were affirmed on 24 December 2004.

Issue 1: (Nondecisional) The Applicant seeks clemency to better his life and the life of his family. The NDRB does not grant clemency to better one's life or that of his family. 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.

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 clemency was not warranted. Therefore, the awarded characterization of service shall remain BAD CONDUCT DISCHARGE and the narrative reason for separation shall remain COURT-MARTIAL. 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