

ex-, USMC

Current Discharge and Applicant's Request

Application Received: 20140311
Characterization of Service Received:
Narrative Reason for Discharge:
Authority for Discharge: MARCORSEPMAN

Applicant's Request: Characterization change to:
Narrative Reason change to:

Summary of Service

Prior Service:

Inactive: USMCR (DEP) 20080821 - 20081116 Active:

Pre-Service Drug Waiver:

Period of Service Under Review:

Date of Current Enlistment: 20081117	Age at Enlistment:
Period of Enlistment: Years Months	
Date of Discharge: 20090810	Highest Rank:
Length of Service: Year(s) Month(s) 24 Day(s)	AFQT: 70
Education Level:	
MOS: 0352	Fitness Reports:
Proficiency/Conduct Marks (# of occasions): () / ()	

Awards and Decorations (per DD 214): Rifle

Periods of UA/CONF:

NJP:

- 20090608: Article (Wrongful use, possession, etc. of controlled substances, cocaine 745 ng/ml)
Awarded: Suspended:

SCM: SPCM: CC: Retention Warning Counseling:

Administrative Corrections to the Applicant's DD 214

The NDRB did note administrative error(s) on the original DD Form 214:

“MISCONDUCT”

The NDRB will recommend to the Commandant of the Marine Corps, MMSB-13, that the DD 214 be corrected as appropriate.

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:

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

Applicant's Issues

1. The Applicant contends his misconduct was an isolated incident.
2. The Applicant contends he was not informed of his rights during the NJP or separation process.
3. The Applicant contends his cardiac issue led to his misconduct.
4. The Applicant contends family issues led to his misconduct.
5. The Applicant contends his MOS changing from 0311 to 0352 led to his misconduct.
6. The Applicant contends his post-service conduct warrants an upgrade.

Decision

Date: 20140807

Location: Washington D.C.

Representation:

By a vote of the Characterization shall .
By a vote of the Narrative Reason shall .

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 for of the Uniform Code of Military Justice (UCMJ): Article 112a (Wrongful use, possession, etc. of controlled substances, cocaine 745 ng/ml). The Applicant a pre-service drug waiver for using marijuana 10 times prior to entering the Marine Corps, acknowledged complete understanding of the Marine Corps Policy Concerning Illegal Use of Drugs on 12 August 2008. Based on the Article 112a violation, processing for administrative separation is mandatory. When notified of administrative separation processing using the procedure, the Applicant rights to consult with a qualified counsel, submit a written statement, and request an administrative board.

: (Decisional) () . The Applicant contends his misconduct was an isolated incident. Certain serious offenses, even though isolated, warrant separation from the service to maintain proper order and discipline. Violation of Article 112a is one such offense requiring mandatory processing for administrative separation regardless of grade, performance, 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. The command did not pursue a punitive discharge but opted instead for the more lenient administrative discharge. Relief denied.

: (Decisional) () . The Applicant contends he was not informed of his rights during the NJP or separation process. The NDRB 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. Other than the Applicant's statement indicating that he was not informed of his rights during the NJP and separation processes, he provided no evidence. The record clearly shows the Applicant was properly notified of administrative separation on 01 July 2009; the Applicant acknowledged receipt of the notification and waived his rights to consult with a qualified counsel, submit a written statement, and request an administrative board. The NDRB determined the Applicant's discharge was proper. Relief denied.

: (Decisional) () . The Applicant contends his cardiac issue 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.

4: (Decisional) () . The Applicant contends family issues led to his misconduct. While the Applicant may feel that his family difficulties were a contributing factor to his misconduct, they do not mitigate his disobedience of the orders and directives that regulate good order and discipline in the Naval Service, demonstrating he was unsuitable for further service. Relief denied.

5: (Decisional) () . The Applicant contends his MOS changing from 0311 to 0352 led to his misconduct. The NDRB recognizes that serving in the military is challenging and having your career field changed may be disappointing. However, most servicemember's make the proper adjustments to serve honorably and earn their Honorable discharges. In fairness to those servicemembers, commanders and separation authorities are tasked to ensure that undeserving Marines receive no higher characterization than is due. The NDRB determined the Applicant's contention does not excuse or mitigate his misconduct. Relief denied.

6: (Decisional) () . The Applicant contends his post-service conduct warrants an upgrade. The NDRB is authorized to

consider post-service factors in the re-characterization of a discharge. However, there is no law, or regulation, that provides that an unfavorable discharge may be upgraded based solely on good conduct or achievements in civilian life subsequent to leaving the service. Normally, to permit relief, a procedural impropriety or inequity must have been found to exist during the period of enlistment in question. The NDRB conducted a thorough review of the substantial post-service documentation submitted by the Applicant, and after careful consideration of the facts and circumstances surrounding the Applicant's record, the Board determined that partial relief was warranted in this case. Accordingly, by a vote of 3-2, the NDRB voted to upgrade the Applicant's characterization of service to General (Under Honorable Conditions). Partial relief granted. Full relief to Honorable was not granted due to the serious nature of the misconduct.

Summary: After a careful review of the Applicant's post-service documentation and official service records, and the facts and circumstances unique to this case, the Board found the discharge was proper and equitable at the time of discharge. However, the NDRB determined relief is warranted based on equitable grounds. The NDRB voted to upgrade the characterization of service to GENERAL (UNDER HONORABLE CONDITIONS) but 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. The Marine Corps Separation and Retirement Manual, (MCO P1900.16F), effective 1 September 2001 until Present, Paragraph 6210, MISCONDUCT.

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.

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