

ex-, USMC

Current Discharge and Applicant's Request

Application Received: 20140212
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) 20051022 - 20051024 Active: 20051025 - 20051110 ELS
 USMCR (DEP) 20060131

Period of Service Under Review:

Date of Current Enlistment: 20060201 Age at Enlistment:
Period of Enlistment: Years Months
Date of Discharge: 20071221 Highest Rank:
Length of Service: Year(s) Month(s) 21 Day(s)
Education Level: AFQT: 73
MOS: 4313/4341
Proficiency/Conduct Marks (# of occasions): () / () Fitness Reports:

Awards and Decorations (per DD 214): Rifle

Periods of UA/CONF:

NJP:

- 20061219: Article (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer)
Awarded: Suspended:
- 20071019: Article (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer)
Awarded: Suspended:
- 20071130: Article (Larceny and wrongful appropriation)
Awarded: Suspended: (Vacated 20071128)

SCM: SPCM: CC:

Retention Warning Counseling:

- 20060928: For disrespect to a noncommissioned officer
- 20061219: For disrespect toward a gunnery sergeant
- 20071019: For three specifications of disrespect toward noncommissioned officers
- 20071128: For lack of bearing, judgment, and tact

NDRB Documentary Review Conducted (date): 20120109
NDRB Documentary Review Docket Number: MD10-02315
NDRB Documentary Review Findings: GENERAL (UNDER HONORABLE CONDITIONS).

Types of Documents Submitted/reviewed

Related to Military Service:

DD 214:

Service/Medical Record:

Other Records:

Related to Post-Service Period:

Employment:

Health/Medical Records:

Personal Documentation:

Department of VA letter:

Additional Statements:

From Applicant:

Finances:

Rehabilitation/Treatment:

Community Service:

Other Documentation:

From/To Representation:

Education/Training:

Criminal Records:

References:

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.

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

Applicant's Issues

- 1. The Applicant contends his post-service conduct warrants an upgrade to Honorable.

Decision

Date: 20140822

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 Board did complete a thorough review of the circumstances that led to discharge and the discharge process to ensure discharge met the pertinent standards of equity and propriety. The Applicant's record of service included 6105 counseling warnings and for of the Uniform Code of Military Justice (UCMJ): Article 91 (Insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer, 2 specifications) and Article 121 (Larceny and wrongful appropriation, 1 specification). Based on the offenses committed by the Applicant, command administratively processed for separation. When notified of administrative separation processing using the procedure, the Applicant rights to consult with a qualified counsel and submit a written statement but waived his right to an administrative board.

: (Decisional) () . The Applicant contends his post-service conduct warrants an upgrade to Honorable. 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, multiple character references, evidence of continuous honorable unpaid volunteer service in the New York State Guard to include several periods of activation and commissioning as a CWO2, evidence of service to the New York Police Auxiliary, extensive volunteer work and personal contributions to various veterans groups and private charities, and educational achievements. After a careful review of the Applicant's post-service documentation and official service records, and taking into consideration his testimony, the testimony of his witnesses, and the facts and circumstances unique to this case, the NDRB determined that while his discharge was proper and equitable at the time of his discharge, relief is now warranted based on equitable grounds. By a vote of 4-1, the NDRB voted to upgrade the characterization of service to Honorable and change the narrative reason to Secretarial Authority. Relief granted.

Summary: After a thorough review of the available evidence, to include the Applicant's summary of service, record entries, and discharge process, the Board found the discharge was proper and equitable at the time of discharge. However, based on extensive post-service accomplishments and taking into consideration his in-service misconduct, the NDRB determined an upgrade is warranted. Therefore, the awarded characterization of service shall and the narrative reason for separation shall change to . The Applicant remains eligible for a personal appearance hearing for a period of fifteen years from the date of 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

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Washington Navy Yard DC 20374-5023