

, ex-PFC, USMC

## CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130814

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 6210.5 [DRUGS]

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) 19991207 - 2000724 COG Active: NONE

Pre-Service Drug Waiver: YES

## Period of Service Under Review:

Date of Current Enlistment: 20000725

Age at Enlistment: 17 (PARENTAL CONSENT)

Period of Enlistment: 4 Years 0 Months

Date of Discharge: 20031023

Highest Rank: LANCE CORPORAL

Length of Service: 03 Years 02 Months 29 Days

Education Level: 12

AFQT: 31

MOS: 1833

Proficiency/Conduct Marks (# of occasions): 4.1 (8) / 4.0 (8) Fitness Reports: NOT APPLICABLE

Awards and Decorations (per DD 214): Rifle MM CAR SSDR (2) NDSM LoA (2)

Period of CONF: NONE

NJP: 2

- 20010215: Article 86 (Absence without leave, 20010204-20010214, 10 days)

Awarded: RIR FOP RESTR EPD Suspended: FOP RESTR EPD (30 days)

- 20030730: Article 86 (Absence without leave; did on board USS Cleveland on or about 22 June 2003, without authority, fail to return to ship by 0200)

Article 112a (Wrongful use, possession, etc. of controlled substances, Cocaine, 394 ng/ml as evidenced by NAVDRUGLAB msg dtg 171735Z DEC 02)

Awarded: RIR FOP RESTR EPD Suspended: NONE

SCM: NONE

SPCM: NONE

CC: NONE

Retention Warning Counseling: NONE

## TYPES OF DOCUMENTS SUBMITTED/REVIEWED

## Related to Military Service:

DD 214:

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Service/Medical Record:

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Other Records:

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## Related to Post-Service Period:

Employment:

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Finances:

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Education/Training:

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Health/Medical Records:

☐

Rehabilitation/Treatment:

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Criminal Records:

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Personal Documentation:

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Community Service:

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References:

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Department of VA letter:

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Other Documentation:

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Additional Statements:

From Applicant:

☐

From/To Representation:

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From/To Congress member:

☐Key: NFIR - Not found in record  
SPCM - Special court-martial  
CONF - ConfinementRESTR - Restriction  
FOP - Forfeiture of pay  
CC - Civilian convictionNJP - Nonjudicial punishment  
RIR - Reduction in rank  
CCU - Correctional Custody UnitSCM - Summary court-martial  
EPD - Extra duties  
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 an upgrade to qualify for veterans benefits.
2. The Applicant contends his youth was a mitigating factor in his misconduct.
3. The Applicant contends he made a deal with his command that he would serve in Iraq and the command would allow him to complete his enlistment and receive an Honorable discharge.

**DECISION**

Date: 20140312    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**

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 his discharge and the discharge process to ensure his discharge met the pertinent standards of equity and propriety. The Applicant's record of service included two nonjudicial punishments (NJP's) for violations of the Uniform Code of Military Justice (UCMJ): Article 86 (Absence without leave, 2 specifications) and Article 112a (Wrongful use, possession, etc., of controlled substance, Cocaine). The Applicant also had a pre-service drug waiver for using marijuana three times prior to entering the Marine Corps, and acknowledged his complete understanding of the Marine Corps Policy Concerning Illegal Use of Drugs on 6 December 1999. Based on the Article 112a violation, processing for administrative separation is mandatory. 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 an upgrade to qualify for veterans 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. Also, the NDRB does not upgrade a discharge based upon the passage of time after separation.

Issue 2: (Decisional) (Propriety/Equity) **RELIEF NOT WARRANTED.** The Applicant contends his youth was a mitigating factor in his misconduct. The Applicant stated on his application to the NDRB that he "was a 19 year old kid who made a mistake being in the wrong place at the wrong time." While the Applicant may feel his youth was an underlying cause of his misconduct, the record clearly reflects his willful misconduct and demonstrated he was unfit for further service. The evidence of record does not demonstrate that the Applicant was not responsible for his conduct or that he should not be held accountable for his actions. Relief denied.

Issue 3: (Decisional) (Propriety/Equity) **RELIEF NOT WARRANTED.** The Applicant contends he made a deal with his command that he would serve in Iraq and the command would allow him to complete his enlistment and receive an Honorable discharge. The Applicant's service record indicates he tested positive for cocaine prior to his deployment with the 31<sup>st</sup> Marine Expeditionary Unit in support of Operation IRAQI FREEDOM. Notification of the Applicant's positive urinalysis for cocaine was dated 17 December 2002. After returning from deployment, the Applicant was subsequently charged with further misconduct by being absent without leave on 22 June 2003. He was then found guilty of violating UCMJ Article 112a for the pre-deployment cocaine use and the post-deployment UA period at nonjudicial punishment. Despite a servicemember's prior record of service, certain serious offenses warrant separation from the Marine Corps 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. However, his command determined not to process him for separation at the time of his illegal drug use and allowed him to deploy to Iraq. Upon return from Iraq, however, further misconduct led the command to impose

nonjudicial punishment and to make the determination that the Applicant was not suitable for further service. The Applicant was provided with a rare opportunity to recover from drug misconduct, but he squandered this by committing additional misconduct upon his return from Iraq. The NDRB found the characterization of the Applicant's discharge was equitable and consistent with the characterization of discharge given others in similar circumstances. Relief denied.

Summary: After a thorough review of the available evidence, to include the Applicant's summary of service, medical and 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.

**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