

ex-EM3, USN

CURRENT DISCHARGE AND APPLICANT'S REQUEST

Application Received: 20130524

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) MILPERSMAN 1910-146 [DRUG ABUSE]

Applicant's Request: Characterization change to: GENERAL (UNDER HONORABLE CONDITIONS)

Narrative Reason change to: NONE REQUESTED

SUMMARY OF SERVICE**Prior Service:**

Inactive: USNR (DEP) 19890731 - 19900624 COG

Active: 19900625 - 19960208 HON

19960209 - 20000113 HON

Pre-Service Drug Waiver: NO

Period of Service Under Review:

Date of Current Enlistment: 20000114

Age at Enlistment: 31

Period of Enlistment: 2 Years 24 MONTHS Extension

Date of Discharge: 20020925

Highest Rank/Rate: EM2

Length of Service: 02 Year(s) 08 Month(s) 12 Day(s)

Education Level: 12

AFQT: 42

Evaluation Marks: Performance: 4.0 (4)

Behavior: 4.0 (4)

OTA: 3.86

Awards and Decorations (per DD 214): NDSM (2) GCM (3) NMCAM (4) NMCCM SWASM NAVY "E" SDR (5) MUC
KLM

Periods of UA: None

Periods of CONF: NONE

NJP: 1

- 20020912: Article 86 (Absence without leave)

Article 112a (Wrongful use, possession, etc. of controlled substances, possession 35g of marijuana)

Awarded: FOP RIR RESTR EPD Suspended: NONE

SCM: NONE

SPCM: NONE

CC: NONE

Retention Warning Counseling: NONE

ADMINISTRATIVE CORRECTIONS TO THE APPLICANT'S DD 214

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

Block 18, Remarks, should contain the statement: "CONTINUOUS HONORABLE ACTIVE SERVICE FROM 900625 UNTIL 000113"

The NDRB will recommend to the Commander, Navy Personnel Command, that the DD 214 be corrected as appropriate.

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

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. The Naval Military Personnel Manual, (NAVPERS 15560C), Change 33, effective 22 August 2002 until 28 April 2005, Article 1910-146, SEPARATION BY REASON OF MISCONDUCT - DRUG ABUSE.

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
 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 an upgrade to enhance employment opportunities.
2. The Applicant contends his discharge was based on an isolated incident in 12 years of honorable service.

DECISION

Date: 20131114 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 in his current enlistment included one nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ): Article 86 (Absence without leave, 1 specification) and Article 112a (Wrongful use, possession, etc. of controlled substances, 1 specification). 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 enhance employment opportunities. The NDRB has no authority to upgrade a discharge for the sole purpose of enhancing employment opportunities. Regulations limit the NDRB's review to a determination of the propriety and equity of the discharge.

Issue 2: (Decisional) (Propriety/Equity) **RELIEF NOT WARRANTED.** The Applicant contends his discharge was based on an isolated incident in 12 years of honorable service. The Applicant received Honorable discharges for his first two enlistments from June 1990 to January 2000. Each period of enlistment is an independent obligation and characterization is determined for that specific period of time. During his third enlistment, the Applicant was found guilty at NJP of violating UCMJ Articles 86 and 112a, which does not require a positive urinalysis. Possession of a controlled substance is also a violation of UCMJ Article 112a. 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, enlistments, 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. The NDRB determined his discharge was warranted, proper, and equitable. 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 **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.

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