**ex- Cpl,**

**Current Discharge and Applicant’s Request**

Application Received: 20161018

Characterization of Service Received:

Narrative Reason for Discharge:  MISCONDUCT

Authority for Discharge:   MARCORSEPMAN 6210.6 [COMMISSION OF A SERIOUS OFFENSE]

Applicant’s Request: Characterization change to:

Narrative Reason change to: ADMINISTRATIVE or UNCHARACTERIZED

Reentry Code change to: RE-1

Type of Separation change to: RELEASE FROM ACTIVE DUTY

**Summary of Service**

**Prior Creditable Service:**

Inactive:  Active:  20011206 - 20061004

**Period of Service Under Review:**

Date of Enlistment: 20061005 Age at Enlistment:

Period of Enlistment:  Years  Extension

Date of Discharge: 20070817 Highest Rank/Rate: Sgt

Length of Service:   Year(s)  Month(s) 13 Day(s)

Education Level:  AFQT: 55

Evaluation Marks (# of occasions): Performance/Proficiency: 4.4 (NFIR) Behavior/Conduct: 3.9 (NFIR)

Fitness Reports:

Awards and Decorations (per DD 214): Rifle  (3rd Awd) Pistol  NMCAM GCM SSDR GWOTSM NDSM MUC MM (2) CoC (Individual Awd) LoA (4)

Periods of UA: NONE

Periods of CONF: NONE

Other Time Lost per DD214: NONE

SCM:  SPCM:  CIVIL ARREST:  CC:  Retention Warning Counseling:

NJP:

- 20070516: Article 92 (Failure to obey order, regulation) 2 specifications

Awarded:  Suspended:

- 20070530: Article 92 (Failure to obey order, regulation) Refused direct order to report to Hotel Co and perform his the duties as a drill instructor

Awarded:    Suspended:

**Administrative Corrections to the Applicant’s DD 214**

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

“CONTINUOUS HONORABLE ACTIVE SERVICE FROM 011206 UNTIL 061005”

The NDRB will recommend to the Commandant of the Marine Corps or Commander, Navy Personnel Command that the DD 214 be corrected as appropriate.

**Types of Documents Submitted/reviewed**

DD 214:  Service/Medical Record:  Other Records:

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:

**Types of Witnesses Who Testified**

Expert:  Character:

Witness E-1: Witness C-1:

Witness E-2: Witness C-2:

**Pertinent Regulation/Law**

A. Paragraph 6210, MISCONDUCT of the Marine Corps Separation and Retirement Manual, (MCO P1900.16), effective 1 26 November 2013 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. The Manual for Courts-Martial authorizes the award of a punitive discharge if adjudged as part of the sentence upon conviction by a special or general court-martial for violation of the UCMJ. Article 92, Failure to obey order regulation.

**DEPARTMENT OF THE NAVY**

**NAVAL DISCHARGE REVIEW BOARD (NDRB)**

**DISCHARGE REVIEW DECISIONAL DOCUMENT**

**Applicant’s Issues**

1. The Applicant requests a change to his character of service, narrative reason for separation and reentry code in order to reenlist in the USMC.
2. The Applicant requests a change to his type of separation contending that the current one listed is incorrect.
3. The Applicant contends that his command did not support him in his request to take care of his personal problems to include divorce and that this contributed to the events that led to his separation.
4. The Applicant requests a change to his reentry code contending that his separation was based on a unique, isolated incident that does not reflect previous service record history.
5. The Applicant requests a change to his narrative reason for separation contending that the current entry is inaccurate of the actual events and unjust because of the swift negative posture the command took.

**Discussion**

Date: 20161130  Location: WASHINGTON D.C. Representation:

# The Naval Discharge Review Board (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 completed a thorough review of the circumstances that led to the discharge and the discharge process to ensure the pertinent standards of equity and propriety were met.

The Applicant's record of service included:

for  of the Uniform Code of Military Justice (UCMJ):

Article 92 (Failure to obey order, regulation) 3 specifications

Based on the  committed by the Applicant, the command administratively processed the Applicant for separation. The NDRB did not have the Applicant’s administrative separation package to determine whether or not the Applicant waived their rights to consult with a qualified counsel, submit a written statement, and request an Administrative Separation Board. A separation code of HKQ1 on the Applicant’s DD 214 indicates that an Administrative Separation Board was waived.

Issue 1: The Applicant requests a change to his character of service, narrative reason for separation and reentry code in order to reenlist in the USMC. Effective 6 February 2015, the NDRB is authorized to change a NDRB Applicant’s Reenlistment Code if related to an accompanying change in discharge characterization or narrative, but this authority is strictly limited to those cases where an applicant’s narrative reason or characterization of discharge is changed and that change warrants revision of the previously issued reenlistment code. 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.

Issue 2: The Applicant requests a change to his type of separation contending that the current one listed is incorrect. The Applicant contends that per the MARCORSEPMAN (MCO 1600.16), paragraph 1003, that “Discharged” is not an appropriate type of separation and that “General Discharge” is the official verbiage. Appendix B “Detailed Instructions for DD Forms 214, 214WS, 214C, and 214” of the MARCORPSEPMAN, paragraph B001.23a. lists “Discharged” and does not list “General Discharge” as a type of separation that should be entered on the DD Form 214. The Applicant would like his type of discharge changed to “Released from Active Duty” because although his command wanted discharge him, he did not want to go and he believes that he was let go or “released” by his command. Despite the Applicant’s contention, the record shows that the Applicant was discharged and “discharged” is accurate as the type of separation the Applicant received.

Issue 3: The Applicant contends that his command did not support him in his request to take care of his personal problems to include divorce and that this contributed to his disciplinary problems. The Applicant contends the characterization of his discharge should be upgraded because he suffered a lot of setbacks due to family issues. The NDRB recognizes that serving in the military is challenging. Most servicemembers, however, serve honorably and therefore earn their Honorable discharges. In fairness to those Marines and Sailors who served honorably, Commanders and Separation Authorities are tasked to ensure that undeserving servicemembers receive no higher characterization than is due. Although the Applicant states that he went to the chaplain to discuss his need for taking time off to take care of his marital issues, and the chaplain addressed this to his command, refusing to perform ones duties on three separate occasions in violation of UCMJ Article 92 was not justified. The NDRB determined the Applicant’s personal problems were not mitigating factors in his misconduct. Relief denied.

Issue 4: The Applicant requests a change to his reentry code contending that his separation was based on a unique, isolated incident that does not reflect previous service record history. Despite a servicemember’s prior record of service, certain serious offenses, even though isolated, warrant separation from the Naval Service to maintain proper order and discipline. 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 Applicant was found guilty of violation of UCMJ Article 92 (three specifications). However, his command did not pursue a punitive discharge but opted instead for the more lenient administrative discharge. 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.

Issue 5: The Applicant requests a change to his narrative reason for separation contending that the current entry is inaccurate of the actual events and unjust because of the swift negative posture the command took. The NDRB was unable to review the Applicant’s discharge package, as it was not included in his official service record. The NDRB presumed regularity in governmental affairs in that the Separation Authority and Staff Judge Advocate review of the discharge package ensured that the Applicant was afforded all of his administrative rights pursuant to the separation process. The Applicant’s separation code on his DD Form 214 indicates that he waived his right to an Administrative Separation Board. If the Applicant felt that his discharge was unjust, it was his obligation to contest those charges at the time they were made. During an administrative separation board, he would have had the opportunity to mount a defense against the charges. The Applicant submitted insufficient evidence to support his contention that his narrative reason for separation is inaccurate and unjust, therefore, the NDRB must rely upon the presumption of regularity in the conduct of Government affairs. Relief denied.

**Decision**

After a thorough review of the available evidence, to include the Applicant’s issues, summary of service,  record entries, and discharge process, the Board found  at the time of discharge. Therefore, the awarded characterization of service shall  **GENERAL (UNDER HONORABLE CONDITIONS)**, the narrative reason for separation shall  **MISCONDUCT** with a corresponding separation code of **HKQ1**, and the reentry code shall  **RE-4.** The Applicant remains eligible for a personal appearance hearing for a period of fifteen years from the date of the 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/>. More information is available at <http://www.secnav.navy.mil/mra/CORB/pages/ndrb/default.aspx>.

*Additional Reviews*: After a document review has been conducted, former members are eligible for a personal appearance or telephonic 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, or <http://www.secnav.navy.mil/mra/bcnr/Pages/default.aspx> 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*: Effective 6 February 2015, the NDRB is authorized to change a NDRB Applicant’s Reenlistment Code if related to an accompanying change in discharge characterization or narrative, but this authority is strictly limited to those cases where an applicant’s narrative reason or characterization of discharge is changed and that change warrants revision of the previously issued reenlistment code. 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-Traumatic Stress Disorder and/or Traumatic Brain Injury*: For all claims involving PTSD and/or TBI, the NDRB’s review implemented the guidance set forth in the SECDEF Memorandum of 3 September 2014 (Supplemental guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requests by Veterans Claiming Post Traumatic Stress Disorder). In accordance with U.S. Code, Title X, Section 1553 (d)(1) & d(2), the NDRB included a member who is a physician, clinical psychologist, or psychiatrist and accorded the case sufficient priority to achieve an expedited resolution and a final decision.

*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.

*Military Sexual Trauma*: The Department of Veterans Affairs (VA) uses the term "military sexual trauma" (MST) to refer to experiences of sexual assault or repeated, threatening sexual harassment experienced while on federal active duty, active duty for training, or inactive duty training. To get confidential one-on-one help please contact the MST Coordinator at your nearest VA Medical Center or Call Safe Helpline at 1-877-995-5247 or visit [www.mentalhealth.va.gov/msthome.asp](http://www.mentalhealth.va.gov/msthome.asp).

*Reporting Military Sexual Trauma*: To report a military sexual trauma, you can make an anonymous report to the Naval Criminal Investigative Service (NCIS) by Text or Online. The NCIS Tip Line provides service members, veterans and civilians a safe, discreet and ANONYMOUS option to report criminal and force protection threats within the USN and USMC without concerns of retaliation.  To report a crime by Text: Text **274637** (CRIMES); Type “**NCIS**” at the top of the message; and include as much detail as possible to ensure your tip can effectively be investigated. To send your ANONYMOUS Tip via the online, go to <https://www.tipsubmit.com/webtipsNAV.aspx?AgencyID=840>.

*Suicide Prevention*: Veterans in emotional crisis or their loved ones can call the free and confidential Veterans Crisis Line at 1-800-273-8255 (then press 1); or chat online at [http://www.veteranscrisisline.net](https://www.veteranscrisisline.net/), or send a text message to 838255 to connect with a caring, qualified Veteran Affairs Responder who can deal with any immediate crisis.