

**SUMMARY:** The applicant was discharged on 20 July 2007 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of his discharge characterization and a change to the discharge narrative reason.

The applicant was represented by counsel.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 17 October 2023. Three witnesses were present to testify on the applicant's behalf.

The attached examiner's brief (provided to applicant only), extracted from available service records, contains pertinent data regarding the circumstances and character of the applicant's military service.

**DISCUSSION:** The Discharge Review Board (DRB), under its responsibility to examine the propriety and equity of an applicant's discharge, is authorized to change the characterization of service and the narrative reason for discharge if such changes are warranted. If applicable, the board can also change the applicant's reentry code. 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 determine if the discharge met the pertinent standards of equity and propriety.

The applicant's record of service included an Article 15 for wrongful use of marijuana.

The documentary evidence the Board considered as part of the review includes, but is not limited to the DD Form 293, *Application for the Review of Discharge from the Armed Forces of the United States*, and any additional documentation submitted by applicant and/or counsel; the applicant's personnel file from the Automated Records Management System (ARMS); and the DRB Brief detailing the applicant's service information and a summary of the case.

Through counsel the applicant contended his marijuana use was directly related to his attempt to self-medicate from horrific events he endured as a medical technician. He claimed this was a one-time incident and his service was otherwise honorable and deserving of a discharge upgrade. Furthermore, he claimed he was not informed or advised of the retention criteria for drug use, and he was provided very little help in providing his response to the discharge action. He now claims to have PTSD as well as other mental health issues, all from his time in the service.

A review of the applicant's record revealed he tested positive for marijuana during random urinalysis testing. He was punished under Article 15 for the misconduct and accepted responsibility for his actions. He claimed in his application that he was in a very dark place at the time of his drug use and had been drinking heavily. He claimed it was a one-time use. He submitted excerpts from his Department of Veterans Affairs (DVA) medical records that reflected he was/is seeing mental health providers and has a 100% service-connected disability rating for PTSD.

The applicant's counsel argued at the DRB hearing that his discharge was improper because the applicant's Area Defense Counsel did not address the seven retention criteria identified in AFI 36-3208, at the time of discharge, and had they been addressed, the applicant likely would have been retained. Counsel also argued recent changes in retention policy for drug abuse, whereby a Service member under the same circumstances today would

reasonably be expected to receive a more favorable outcome than the applicant received, may be grounds for relief.

### **LIBERAL CONSIDERATION:**

Due to evidence of a mental health condition found in the applicant's medical record, the Board considered the case based on the liberal consideration (LC) standards required by guidance from the Office of the Under Secretary of Defense for Personnel and Readiness and 10 USC §1553. The Board included a member who is a physician, clinical psychologist, or psychiatrist. Specifically, the Board reviewed the four questions the Under Secretary of Defense provided that boards should consider when weighing evidence in requests for modification of discharges due in whole or in part to mental health conditions, including post-traumatic stress disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault, and sexual harassment. The Board considered the following:

1. Did the veteran contend that a condition or experience may have excused or mitigated their misconduct or discharge?

*The applicant checked the box for "PTSD" on the application. The applicant, through counsel, contended his discharge was inequitable given the facts involved a single experimental use of marijuana while trying to cope with mental health challenges he was suffering.*

2. Did that condition exist/experience occur during military service?

*The applicant's records reflected he sought and received mental health services during his time in service. A review of the applicant's records revealed he was seen in the Life Skills Clinic in February 2005 due to a partner relational problem. The applicant's in-service records also revealed he was referred to mental health services upon completion of a substance use intake for a command directed referral to ADAPT upon positive drug screening. The applicant's mental health record revealed he reported having difficulty sleeping due to his work schedule and feeling lonely and depressed. The applicant's records indicated he attended five sessions in the mental health clinic prior to terminating services due to no longer wishing to participate. The applicant received the diagnosis, in service, of adjustment disorder with mixed anxiety and depression.*

3. Does that condition or experience actually excuse or mitigate the discharge?

*The applicant was discharged due to drug use (marijuana). The applicant contended his drug use was an isolated event. The applicant's contentions that his maladaptive alcohol and drug use began after his deployment to Landstuhl, was experimental, and a one-time occurrence are contradictory to the records available for review.*

*The applicant's service records revealed a history of pre-service maladaptive marijuana and alcohol use. The applicant's military entrance paperwork revealed he had pre-service criminal offenses of possession of drug paraphernalia, contributing to the delinquency of a minor, and unlawful possession or consumption of alcohol in a public place.*

*Based on the available evidence in the applicant's records, along with the applicant's testimony, there is evidence his pattern of maladaptive alcohol use and marijuana use existed prior to service. The applicant reported in his response to the discharge notification that he was aware that his use of marijuana was wrong. The applicant's records also revealed he chose to use alcohol and drugs in a way that was incompatible with military service, which may explain the applicant's drug use, but it does not mitigate the applicant's misconduct.*

*Furthermore, the applicant, contended his use of marijuana was an attempt to self-medicate his undiagnosed symptoms of PTSD. The applicant contended he reported these symptoms to the DVA ten years post discharge including anxiety, irritability, and anger. The symptoms are not consistent with those reported by the applicant*

during his time in service; poor sleep due to work schedule, isolation, described by the applicant as due to his age and maturity relative to his peers, and depressed mood. Based on a review of the applicant's available post-service records, his condition of PTSD as likely as not developed post-service. The applicant reported that he worked as a defense contractor for many years post discharge in Afghanistan, Iraq, and Kuwait. Post service reflected the applicant reported his "sleep problems started when he returned from deployment as a government contract worker.

#### 4. Does that condition or experience outweigh the discharge?

After a thorough review, the DRB found no evidence a mental health condition caused or mitigated the misconduct that led to the applicant's discharge. However, in making their decision regarding the applicant's request to upgrade his character and change his narrative reason, the Board considered the factors laid out in the attachment to the Under Secretary of Defense memorandum, Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice, or Clemency Determinations, dated 25 June 2018, known as the "Wilkie Memo." The Board considered the factors listed in paragraphs (6)(a)-(6)(l) and (7)(a)-(7)(r) of this memorandum, and concluded it is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds. Additionally, relief is generally more appropriate for non-violent offenses than for violent offenses. Furthermore, the Board considered the length of time since the misconduct and the applicant's acceptance of responsibility, remorse, or atonement for the misconduct.

**FINDING:** The DRB voted unanimously to **approve** the applicant's request to upgrade his discharge characterization and to change the discharge narrative reason. The DRB also voted unanimously to **approve** changing the applicant's reentry code.

Additionally, although the applicant's discharge date was over 15 years from the date of his application for a personal appearance hearing, based on an administrative error, the DRB made an exception to policy and allowed the hearing to be held.

Should the applicant wish to appeal this decision, the applicant must seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

**CONCLUSION:** After a thorough review of the available evidence, to include the Applicant's issues, summary of service, service/medical record entries, and discharge process, the Board granted relief on the basis of equity and clemency. Therefore, the awarded characterization of service shall change to "Honorable" the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall change to "2C." The Air Force DRB (AFDRB) results were approved by the board president on 24 October 2023. If desired, the applicant can request a list of the board members and their votes by writing to:

Air Force Review Boards Agency  
Attn: Discharge Review Board  
3351 Celmers Lane  
Joint Base Andrews, NAF Washington, MD 20762-6602  
Instructions on how to appeal an AFDRB decision can be found at  
<https://afrbportal.azurewebsites.us>

Attachment:  
Examiner's Brief (Applicant Only)

