

SUMMARY:

The applicant was discharged on 25 February 2021 in accordance with AFI 36-3208 with a General Discharge for Misconduct (Serious Offense). The applicant appealed for an upgrade of his discharge characterization and a change to the discharge narrative reason.

The applicant was not represented by counsel.

The applicant requested the board be completed based on records review only. The Board was conducted on 09 March 2023.

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 reenlistment eligibility 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 a Summary Court-Martial and Special Court-Martial Entry of Judgment. His misconduct included: Unlawfully grasped and pulled a child under the age of 16 years; unlawfully strangled a child under the age of 16 years; wrongful use of marijuana; wrongfully used Lysergic Acid Diethylamide (LSD).

The applicant stated that he underwent PEB and was found unfit for duty and a Sanity Board determined he was not sane during the course of events which led to discharge.

The DRB determined there was no impropriety in the discharge. However, there was sufficient evidence to convince the Board that the discharge was inequitable. The DRB concluded that in this case, an upgrade to the discharge was warranted.

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 have a condition or experience that may excuse or mitigate the discharge?

The applicant checked the box for “other mental health” on the application. The applicant contended “I underwent Physical Examination Board and was found Unfit for Duty, with my conditions indicated as occurring in the line of duty and considered permanent/stable. I also underwent a Sanity Board and was found to not be sane during the course of the events which indicated my misconduct charges. A review of my military service treatment records, to include the PEB results, will show my medical conditions, and I am requesting my discharge be changed to HONORABLE for the character, and either MEDICAL or ADMINISTRATIVE for the Narrative.”

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

A review of the applicant’s records revealed the applicant was given the diagnosis of bipolar I disorder in service. The IPEB found the applicant’s mental health condition unfit for continued service and recommended the applicant be permanently retired with a 70% disability rating; the applicant’s case was referred to SAFPC for dual-action processing. SAFPC directed the applicant be administratively discharged under the provisions of AFI-36-3208 and terminated the action under the provisions of AFI 36-3212 and IDES for the applicant’s diagnosis of bipolar I disorder.

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

Based on a review of the applicant’s records, the applicant’s discharge was considered and processed through dual-action case processing. The dual-action Board voted 4-1 for a medical discharge; however, SAFPC recommended the applicant be discharged administratively as SAFPC concluded there were insufficient mitigating factors to disregard the applicant’s disciplinary action; further SAFPC noted the applicant’s second sanity board revealed the applicant’s drug use likely precipitated the applicant’s violent offense. A review of the applicant’s dual-action decision rationale acknowledged the applicant’s mental health condition, but the SAFPC dual action board found insufficient mitigating evidence to recommend a medical retirement. A further review of the applicant’s records revealed the applicant’s pattern of hallucinogen abuse began prior to his deployments and continued until 2020. In considering the totality of the applicant’s time in service and in considering the applicant’s case under the intent of liberal consideration there is evidence the applicant’s mental illness may have substantially contributed to the misconduct that led to his discharge.

4. Does that condition or experience outweigh the discharge?

In reviewing the totality of the applicant’s service career and the severity of the applicant’s condition under the intent of liberal consideration, there is evidence the applicant’s mental health condition outweighs the discharge.

Additionally, 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.

FINDING: The DRB voted unanimously to **approve** the applicant’s request to upgrade his discharge characterization to “Honorable”, to change the discharge narrative reason to “Secretarial Authority,” and to change the reenlistment eligibility code to “2C.”

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 found the discharge was inequitable based on Liberal Consideration. 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 14 April 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)