

**SUMMARY:** The applicant was discharged on 15 March 2016 in accordance with AFI 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 28 March 2023. Two (2) 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 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 Letters of Reprimand and Counseling. His misconduct included: underage drinking, failure to go, and wrongful use of marijuana.

Through counsel, the applicant contended he qualified for liberal consideration (LC) due to service-connected post-traumatic stress disorder (PTSD). He also contended his case met the criteria for relief on the basis of equity and justice. He claimed at the time of his discharge, he met the criteria for retention, and his command supported his retention; however, "legal" advised against it. Furthermore, the applicant contended other Airmen who also used marijuana, but were closer to their expiration of service date, were allowed to separate voluntarily with an honorable characterization. Finally, the applicant contended he was deserving of an upgrade based on clemency.

The applicant testified at his hearing that he admitted to smoking marijuana during an administrative investigation into a "drug ring" that he was not a part of. He used marijuana twice approximately one to two (1-2) years prior to the investigation and he admitted to the use but did not disclose the true reason why he used. He further claimed, at the time of his drug use he was suffering from PTSD related to his duties as a firefighter and he did not seek treatment out of fear of losing his job. Since his discharge the applicant claimed he had been diagnosed by the Department of Veterans Affairs (VA) with service-connected PTSD and mental health providers at the VA believed his multiple duty-related trauma experiences were likely the cause of his drug use.

A review of the applicant's record revealed he admitted to Office of Special Investigation (OSI) agents during an investigation that he used marijuana twice with two (2) other Airmen. Additionally, the applicant also had a prior incident of underage drinking and reporting late to work. During his discharge processing the applicant requested to be retained; however, based on advice from the Staff Judge Advocate, it was determined he did not meet all seven (7) retention criteria; specifically, his retention was not consistent with

maintaining good order and discipline. The applicant's former First Sergeant submitted a statement to the board, and also testified at the hearing, that the unit wanted to retain the applicant but were advised not to, and he also stated other Airman that also used drugs were allowed voluntarily separation, but he wasn't sure why. The applicant stated in his response to the discharge notification that he used marijuana because he was young, impressionable, and fell in with the wrong crowd; he made no mention of any mental health concerns. However, in his application to the DRB he claimed he was suffering from mental health problems but chose not to seek help for them because of the stigma. He further claimed, it was not until after his discharge that he was diagnosed with service-connected PTSD, and this condition was likely the reason he used marijuana.

**LIBERAL CONSIDERATION:** Due to the applicant's contention of a mental health condition, the Board considered the case based on the 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 (4) 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 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 his application. The applicant, through counsel, contended "see memorandum in support previously submitted for the initial records review." No new claims or contentions were submitted by the applicant. A review of the applicant's prior request to the board revealed the applicant contended "at the time and currently, [the applicant] was suffering from service-related PTSD, he did not seek diagnosis and treatment while in the service because he had been warned, and he believed, that seeking help would have caused him to lose his job." The applicant also contended he qualified for liberal consideration due to service-connected PTSD."*

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

*There is no evidence or records to substantiate that the applicant was diagnosed with, exhibited, or endorsed any symptoms of PTSD, or any mental health condition, during his time in service. Based on review of the available records, there is no evidence the applicant's duty performance in service was impaired by a mental health condition as evidenced by his own personal statement, witness testimony during the personal hearing, and review of the applicant's Enlisted Performance Reports. Despite counsel's argument that the applicant's disciplinary record was indicative of someone struggling with PTSD, the Board did not draw the same conclusion and found this argument without merit.*

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

*As noted in the applicant's record review rationale, a review of the applicant's records revealed his incident(s) of misconduct occurred prior to the applicant's timeline of events, and deployment, that the applicant contended led to his post-service diagnosis of PTSD-delayed onset. Per review of the evidence, the applicant acknowledged that he smoked marijuana twice in 2013. The applicant stated in his personal appearance testimony that his marijuana use may have been in 2014, and both times he used were off duty in the context of socializing and alcohol use with friends. In the applicant's personal statement, included with his application, he detailed events and a deployment that he contended led to his post-service diagnosis of PTSD. The applicant's recollection of events that led to his post-service PTSD diagnosis occurred after his incident(s) of smoking marijuana and do not pertain to the mitigation of the misconduct that led to the applicant's discharge as the events occurred after the misconduct.*

*Additionally, as noted in the previous rationale, a 09 March 2016 Memorandum for Record from the applicant's Commander also indicated there was no indication that the applicant's misconduct was the result of PTSD or traumatic brain injury. Furthermore, at the time of the applicant's discharge, he made no claims or contentions of a mental health contention in his discharge notification, and there is no evidence to substantiate he smoked marijuana to self-medicate a mental health condition. The applicant stated in his response to the discharge notification that he experimented with marijuana because he was young, impressionable, and easily manipulated. He admitted he was associating with a bad crowd and fell victim to peer pressure. He understood using marijuana was in poor judgment and claimed he learned from his mistake. The applicant stated during his personal appearance hearing that both of his marijuana use incidents were during a time when he was new to the Air Force and adjusting to the military lifestyle and deciding between making a career in the Air Force and doing what he needed to get through. The Board acknowledged that adjusting to the military lifestyle and poor coping skills may explain the applicant's misconduct, but it does not mitigate the discharge.*

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

*The applicant was discharged for drug use. Based on the available evidence and records, the Board concluded the applicant's mental health condition as likely as not developed post-service. The applicant and counsel repeatedly noted during the personal appearance hearing that the VA diagnosed the applicant with PTSD. A diagnosis, in and of itself, does not mitigate misconduct. Regarding the applicant's concurrence with his VA diagnoses, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release for service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the "snapshot in time" of the applicant's service, there is no evidence the applicant had a mental health condition that caused or mitigated the misconduct which led to the applicant's discharge. The applicant, counsel, and the applicant's witnesses provided testimony during the applicant's personal appearance hearing that he was a "go to" worker and friend and described the culture of the Air Force fire service, including critical call runs and the stress of the job. The applicant did not provide any evidence or testimony that his drug use was due to a mental health condition. Because the applicant's condition does not mitigate his discharge, it does not outweigh his 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 and did not find any evidence of an inequity or impropriety. Furthermore, the Board considered the applicant's candor in assessing the appropriateness of his discharge and determined his drug use predated his PTSD triggering event(s) and was likely conducted socially, not for self-medicating a mental health condition.

**FINDING:** The DRB voted unanimously to **deny** the applicant's request to upgrade his discharge characterization to "Honorable" and to change the discharge narrative reason to "Secretarial Authority." The Board also voted unanimously to **deny** changing the reenlistment eligibility code to "2C" or "3K."

**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 proper and equitable. Therefore, the awarded characterization of service shall remain, the narrative reason for separation shall remain, and the reentry code shall remain. The Air Force DRB (AFDRB) results

were approved by the board president on 05 May 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

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*.

Instructions on how to appeal an AFDRB decision can be found at <https://afrbportal.azurewebsites.us>

Attachment:  
Examiner's Brief (Applicant Only)