

## RECORD OF PROCEEDINGS

**IN THE MATTER OF:**

**DOCKET NUMBER:** BC-2021-01331

**COUNSEL:** YES

**HEARING REQUESTED:** NO

---

---

### APPLICANT'S REQUEST

Her DD Form 214, *Certificate of Release or Discharge from Active Duty*, to reflect narrative reason for separation of "Secretarial Authority" vs "Discharge Fraudulent Entry into Military Service, Drug Abuse" and the corresponding separation and reenlistment (RE) codes.

### APPLICANT'S CONTENTIONS

The Air Force violated AFI 90-507, *Military Drug Demand Reduction Program*, when there were multiple errors in the collection and processing of her urinalysis sample that led to her discharge. The positive urinalysis was scientifically impossible under the circumstances. If she had ingested tetrahydrocannabinol (THC), it was accidental and innocent and thus not misconduct. Justice requires she be given a second chance at serving the military despite any prior drug use. If the Board believes she did ingest THC, it should look to the Wilkie memorandum for guidance on how to judge the severity of the misconduct. Marijuana is now legal in several states. At worst, she used THC on one occasion, a minor infraction and should not be robbed of the opportunity to serve her nation because of one act of minor misconduct, especially one that was accidental and innocent.

In support of her request, the applicant provided copies of her DD Form 214, test results, chain of custody documents, AFI 90-507, three articles, Military Entrance Processing Station (MEPS) drug test results, petition, letters of support, and the Wilkie memorandum.

The applicant's complete submission is at Exhibit A.

### STATEMENT OF FACTS

The applicant is a former Air Force airman first class (E-3).

On 28 May 15, the applicant provided a urinalysis specimen and on 11 Jun 15, notification was made that the applicant tested positive for THC-40.

On 29 Jun 15, the applicant's commander recommended the applicant be discharged from the Air Force, under the provisions of AFPD 36-32, *Military Retirements and Separations*, and AFI 36-3208, *Administrative Separation of Airmen*, for fraudulent entry. The specific reason for the action was the applicant intentionally concealed prior service drug use.

On 26 Jul 15, the discharge authority approved the recommendation.

On 27 Jul 15, the applicant was discharge with an Uncharacterized/Entry Level separation with narrative reason for separation of "Discharge Fraudulent Entry into Military Service, Drug Abuse."

On 3 Oct 19 and 15 Oct 20, the Air Force Discharge Review Board (AFDRB) unanimously denied the applicant's request to upgrade her discharge characterization to honorable, to change the discharge narrative reason to Secretarial Authority, and to change the reenlistment (RE) code to 3K. The AFDRB found insufficient evidence of an inequity or impropriety that would warrant a change to the applicant's discharge. Therefore, the discharge received by the applicant was deemed to be appropriate and her request was not approved. The Board further indicated they were unable to confirm any misconduct with testing during the applicant's tenure at basic military training (BMT). The board considered the negative urinalysis specimen submitted prior to entering BMT, and found it was not impossible for a positive result on a follow-up test three weeks later. After reviewing the service record, the AFDRB found no evidence to indicate the applicant was unaware of the Air Force policy of zero tolerance for illegal drug use. The board found the negative aspects of the applicant's willful misconduct outweighed the positive aspects of her military service.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisories at Exhibits C and D.

### **POST-SERVICE INFORMATION**

On 19 Nov 21, the Board sent the applicant a request for post-service information and advised the applicant she was required to provide a Federal Bureau of Investigation (FBI) Identity History Summary Check, which would indicate whether or not she had an arrest record. In the alternative, the applicant could provide proof of employment in which background checks are part of the hiring process (Exhibit G). Although the applicant did reply to the request for post-service information (Exhibit H), her response did not include an FBI background check or other criminal history data. The applicant provided proof of employment with the United States Post Office as well as character statements, references, and achievements and accolades from her employer.

The applicant's complete response is at Exhibit H.

### **APPLICABLE AUTHORITY/GUIDANCE**

On 3 Sep 14, the Secretary of Defense issued a memorandum providing guidance to the Military Department Boards for Correction of Military/Naval Records as they carefully consider each petition regarding discharge upgrade requests by veterans claiming PTSD. In addition, time limits to reconsider decisions will be liberally waived for applications covered by this guidance.

On 25 Aug 17, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued clarifying guidance to Discharge Review Boards and Boards for Correction of Military/Naval Records considering requests by veterans for modification of their discharges due in whole or in part to mental health conditions [PTSD, Traumatic Brain Injury (TBI), sexual assault, or sexual harassment]. Liberal consideration will be given to veterans petitioning for discharge relief when the application for relief is based in whole or in part on the aforementioned conditions.

Under Consideration of Mitigating Factors, it is noted that PTSD is not a likely cause of premeditated misconduct. Correction Boards will exercise caution in weighing evidence of mitigation in all cases of misconduct by carefully considering the likely causal relationship of symptoms to the misconduct. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with the aforementioned mental health conditions and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

Boards are directed to consider the following main questions when assessing requests due to mental health conditions including PTSD, TBI, sexual assault, or sexual harassment:

- a. Did the veteran have a condition or experience that may excuse or mitigate the discharge?
- b. Did that condition exist/experience occur during military service?
- c. Does that condition or experience actually excuse or mitigate the discharge?
- d. Does that condition or experience outweigh the discharge?

On 25 Jul 18, the Under Secretary of Defense for Personnel and Readiness (USD P&R) issued supplemental guidance to military corrections boards in determining whether relief is warranted based on equity, injustice, or clemency. These standards authorize the board to grant relief in order to ensure fundamental fairness. Clemency refers to relief specifically granted from a criminal sentence and is a part of the broad authority Boards have to ensure fundamental fairness. This guidance applies to more than clemency from sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. Each case will be assessed on its own merits. The relative weight of each principle and whether the principle supports relief in a particular case, are within the sound discretion of each Board. In determining whether to grant relief on the basis of equity, an injustice, or clemency grounds, the Board should refer to the supplemental guidance, paragraphs 6 and 7.

On 19 Nov 21, the Board staff provided the applicant a copy of the liberal consideration guidance (Exhibit G).

#### **AIR FORCE EVALUATIONS**

AFPC/DP2SSR recommends denying the application. The commander provided the base discharge authority (BDA) ample justification to support separation. Based on review of the master of personnel records and the applicant's request, there is no error or injustice with the discharge processing.

The complete advisory opinion is at Exhibit C.

AFPC/DP2SSM recommends denying the application. Although the applicant received an erroneous RE code of 2G--(Participating in or failed the Alcohol and Drug Abuse Prevention and Treatment program for drugs, or has failed to complete the program), there is no evidence of an error or injustice that would warrant a more favorable RE code based on the documentation provided by the applicant and analysis of the facts. The applicant's correct RE code is 2C--(Involuntarily separated with an honorable discharge; or entry level separation without characterization of service), based on her entry level separation with an uncharacterized character of service. Unless otherwise directed by the Board, please send case to the DD Form 214 OPR for correction of RE code to 2C once the Board has made their decision.

The complete advisory opinion is at Exhibit D.

#### **APPLICANT'S REVIEW OF AIR FORCE EVALUATION**

The Board sent a copy of the advisory opinion to the applicant on 25 Oct 21 for comment (Exhibit E), and the applicant replied on 17 Nov 21. In her response, the applicant contended the advisory opinions fail to consider any of her contentions. She is willing to accept the change to her RE code, though she firmly believes the basis for her discharge was erroneous and unjust.

The applicant's complete response is at Exhibit E.

## **FINDINGS AND CONCLUSION**

1. The application was timely filed. Given the requirement for passage of time, all clemency requests are technically untimely. However, it would be illogical to deny a clemency application as untimely, since the Board typically looks for over 15 years of good conduct post-service. Therefore, the Board declines to assert the three-year limitation period established by 10 U.S.C. § 1552(b).

2. The applicant exhausted all available non-judicial relief before applying to the Board.

3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AFPC/DP2SSR and AFPC/DP2SSM and finds a preponderance of the evidence does not substantiate the applicant's contentions. Furthermore, the Board agrees with AFPC/DP2SSR in that the applicant's RE code was erroneously recorded on her DD Form 214 and should be administratively corrected to reflect 2C (Involuntary Separated with an honorable discharge; or ELS without characterization of service) by the DD Form 214 OPR. The Board considered the applicant's request under fundamental fairness based on the Wilkie guidance and does not find an injustice with her discharge. Specifically, the applicant intentionally concealed her prior service drug use, and the Board opines this to be pre-meditated behavior and not considered under the Wilkie guidance. Additionally, the Board considered the applicant's post-service achievements but does not find them to persuade our decision. Therefore, the Board recommends against correcting the applicant's records.

## **RECOMMENDATION**

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

## **CERTIFICATION**

The following quorum of the Board, as defined in Air Force Instruction (AFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 1.5, considered Docket Number BC-2021-01331 in Executive Session on 15 Dec 21 and 23 Mar 22:

Panel Chair  
Panel Member  
Panel Member  
Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 27 Jan 21 and 15 Dec 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AFPC/DP2SSR, dated 13 May 21.
- Exhibit D: Advisory Opinion, AFPC/DP2SSM, dated 14 May 21.
- Exhibit E: Notification of Advisory, SAF/MRBC to Applicant, dated 25 Oct 21.
- Exhibit E: Applicant's Response, w/atchs, dated 17 Nov 21.
- Exhibit G: Letter, SAF MRBC, w/atchs (Consolidate Guidance and Clemency Bulletin), dated 19 Nov 21

Exhibit H: Applicant's Response, w/atchs, dated 3 Dec 21.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by AFI 36-2603, paragraph 4.11.9.

X

---

Board Operations Manager, AFBCMR