



CUI//SP-MIL/SP-PRVCY
UNITED STATES AIR FORCE
BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2021-03052

Work-Product

COUNSEL: *Work-Product*

HEARING REQUESTED: NO

APPLICANT'S REQUEST

1. His administrative separation be removed from his record and he be reinstated to active duty with the associated rank, rights, benefits, and all privileges, or
2. In the alternative, he be issued a DD Form 214, *Certificate of Release or Discharge from Active Duty*, showing he received an honorable discharge with a reentry (RE) code of "1," which denotes "Applicants Eligible for Immediate Reenlistment."

APPLICANT'S CONTENTIONS

Procedural and substantive errors were made in the administrative separation that resulted in his discharge. He did not violate any Air Force rules or regulations and it is substantially unjust to label him a drug abuser when he does not and did not use drugs. His due process rights were violated and the separation should be set aside and removed from his records.

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 15 Sep 16, DD Form 4, *Enlistment/Reenlistment Document-Armed Forces of the United States*, indicates the applicant enlisted in the Air Force Reserve for eight years under the Delayed Entry/Enlistment Program (DEP). He was discharged from the DEP and enlisted in the Regular Air Force on 5 Sep 17 for a period of four years.

On 28 Jun 19, a Notification of Discharge memorandum, provided by the applicant, shows his commander recommended he be discharged from the Air Force, under the provisions of Air Force Instruction (AFI) 36-3208, *Administrative Separation of Airmen*. The specific reasons for the action was during the course of a morale and welfare inspection of the applicant's dormitory room, it was discovered he was in possession of Cannabidiol (CBD) oil, a marijuana extract and drug paraphernalia, which included a vape system and a test kit for hallucinogens.

On 7 Aug 19, DD Form 214 shows he was discharged from the Air Force with an under honorable conditions (general) character of service under authority of AFI 36-3208. The narrative reason for separation was Misconduct (Drug Abuse) with the corresponding separation code of JKK and RE code 2B.

For more information, see the excerpt of the applicant's record at Exhibit B.

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Controlled by: SAF/MRB
CUI Categories: SP-MIL/SP-PRVCY
Limited Dissemination Control: N/A
POC: SAF.MRBC.Workflow@us.af.mil

AIR FORCE EVALUATION

AF/JA recommends denying the application. The commander was not erroneous in administering the separation under AFI 36-3208. It is clear that airmen who abuse drugs are subject to discharge for misconduct. The commander relied on the definition of drug in the AFI as any intoxicating substance that is introduced into the body in a manner for purposes of altering mood or function and the commander's interpretation that CBD oil falls under the AFI was not unreasonable, erroneous, or an abuse of discretion. Also, there was no error or injustice in the use of the seized evidence as basis for the applicant's discharge. The applicant argues his due process rights were violated because the search of his room was improper; however, the separation process confers no such procedural rights for many reasons; one of which is that the consequence, a general discharge under honorable conditions, does not warrant it. Finally, there is no evidence to support the claim that the applicant was not provided assistance of military legal counsel. The record contains insufficient evidence or allegation of an error or injustice tending to undermine the applicant's administrative separation.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 6 Apr 22 for comment (Exhibit D), and the applicant replied on 2 May 22. In counsel's response, counsel contended none of the arguments asserted in the advisory opinion adequately support its recommendation to deny relief. The applicant was improperly and unjustly separated from the Air Force for drug abuse when he never used or was even alleged to have used any drug, and the "drug" at issue within his possession was a federally legal hemp derived substance.

Counsel's complete response is at Exhibit E.

FINDINGS AND CONCLUSION

1. The application was timely filed.
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 AF/JA and finds a preponderance of the evidence does not substantiate the applicant's contentions. It appears the discharge was consistent with the substantive requirements of the discharge regulation and was within the commander's discretion. Nor was the discharge unduly harsh or disproportionate to the offenses committed. The Board notes counsel's contention the applicant was improperly and unjustly separated from the Air Force for drug abuse when he never used or was even alleged to have used any drug, and the "drug" at issue within his possession was a federally legal hemp derived substance. However, the Board notes the commander relied upon the definition of drug in accordance with AFI 36-3208, as any intoxicating substance that is introduced into the body in a manner for purposes of altering mood or function and the commander's interpretation that CBD oil falls under AFI 36-3208 was not unreasonable, erroneous, or an abuse of discretion. 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 the Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2021-03052 in Executive Session on 22 Jun 22:

Work-Product [Redacted], Panel Chair
Work-Product [Redacted], Panel Member
Work-Product [Redacted], Panel Member

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

- Exhibit A: Application, DD Form 149, w/atchs, dated 18 Aug 21.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JA, dated 5 Apr 22.
- Exhibit D: Notification of Advisory, SAF/MRBC to Counsel, dated 6 Apr 22.
- Exhibit E: Applicant’s Response, w/atchs, dated 2 May 22.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

9/19/2023

Work-Product [Redacted]

Board Operations Manager, AFBCMR
Signed by: USAF