

<b>AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT</b>	<b>CASE NUMBER</b> <b>FD-2023-00119</b>
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**SUMMARY:**

The applicant was discharged on 08 October 2021 with a Bad Conduct Discharge after being convicted of Drug Abuse during a Special Court-Martial.

The applicant was represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 13 July 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 Special Court Martial Order #2. His misconduct included: By means of deliberate concealment, withheld the fact that he used Adderall without valid prescriptions, to procure himself to be enlisted; Wrongful use of marijuana; wrongful use of cocaine; wrongful use of amphetamines.

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.

The applicant requested clemency based on undiagnosed and untreated mental health conditions. He also indicated that he was targeted and mistreated by his supervisor despite having knowledge of his serious personal issues he was struggling with. He stated that lack of support for his PTSD and depression resulted in him abusing substances to cope.

Upon review of an applicant's Bad Conduct Discharge as adjudged by a Special Court-Martial, the DRB may change the punitive discharge to an administrative discharge for the purposes of clemency, if warranted. The DRB reviewed the applicant's entire service record and found no evidence to warrant an upgrade to the applicant's discharge. Specifically, the applicant did not present any information that the Board could consider for the purposes of clemency. The Board found the negative aspects of the applicant's willful misconduct outweighed the positive aspects of his military service. The characterization of the discharge received by the applicant was deemed to be appropriate.

## **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:

*Liberal consideration does not apply to this applicant's request. Liberal consideration does not apply to the Article 83 violation: "by means of knowingly false representations that he never experimented with, used, or possessed and illegal drug or narcotic, when in fact he had used misused Adderall numerous times prior to his enlistment, procure himself to be enlisted as an Airman Basic in the United States Air Force and did thereafter, at or near [specified] Air Force based, receive pay and allowances under the enlistment so procured." This is a pre-service condition and/or finding that is excluded from liberal consideration. The applicant's subsequent misconduct, documented as a violation of Article 112 also relates to premeditated and maladaptive substance use. As detailed in the applicant's Article 83 violation, the applicant had a pre-service history of maladaptive substance use; it is as likely as not the applicant's choice to continue to use prohibited substances in service is due to his EPTS (existed prior to service) pattern of illicit substance use, thus liberal consideration does not apply.*

*The applicant provided no information for consideration of clemency.*

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 *deny* the applicant's request to upgrade his discharge characterization, to change the discharge narrative reason, and to change the reenlistment eligibility code.

Should the applicant wish to appeal this decision, the applicant must request a personal appearance before this Board before applying for relief to the Air Force Board for Correction of Military Records (AFBCMR). In accordance with DAFI 36-2603, Air Force Board for Correction of Military Records, all applicants before the AFBCMR must first exhaust available administrative avenues of relief before applying to the AFBCMR, otherwise their AFBCMR case will be administratively closed until such time that the applicant avails themselves of the available avenue of relief. Therefore, should the applicant wish to appeal this decision, they must first exercise their right to make a personal appearance before the AFDRB.

**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] "Bad Conduct Discharge," the narrative reason for separation shall remain "Court Martial (Drug Abuse)," and the reentry code shall remain "2L." The Air Force DRB (AFDRB) results were approved by the board president on 2 August 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)

