

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**CASE NUMBER****FD-2023-00148**

SUMMARY: The applicant was discharged on 14 October 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable (UOTHC) discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason, and a change to the reenlistment eligibility code.

The applicant was not represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 20 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 a Summary Court-martial for wrongful use and possession of cocaine.

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 contended that he was dealing with mental health problems while he was in the military and his unit did nothing to help him, instead they casted him aside. He claimed an individual should not be judged on one bad decision. He further claimed since his discharge he has turned his life around.

A review of the applicant's record revealed he was brought in for questioning about his involvement in cocaine use with other Airmen. He admitted to using seven to eight times. He submitted to a probable cause urinalysis that came back positive at 8959 ng/ml; the DoD cutoff is 100 ng/ml. He consented to a search of his room and vehicle and a bag with approximately 2.15 grams of cocaine was found in his room. He was tried at a Summary Court-martial and pled guilty to all charges and specifications. Through an Alternate Disposition Agreement, the applicant waived his right to an administrative discharge board and was discharged with a UOTHC in lieu of being tried at a Special Court-martial.

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 contend that a condition or experience may have excused or mitigated their misconduct or discharge?

The applicant checked the box for "other mental health" on the application. The applicant contended "I wish I was able to hold on mentally with friends and colleagues to finish out my career and enlistment, but everyone has their breaking point. My last year in the military was a physical and mental struggle until the very end. I wish my squadron and peers at the time helped me like I requested instead of throwing me to the side only to make my mental health struggle and suicidal thoughts and actions worsen. I believe that an individual should not be judged or punished on based on one bad decision, which is the reason for my request."

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

A review of the applicant's service records revealed the applicant received supportive mental health services during his time in confinement. The applicant's records reflected he reported symptoms of stress and anxiety related to being in solitary confinement that abated when the applicant was moved to communal confinement. A review of the applicant's pre and post confinement records revealed he denied any distressing mental health symptoms and declined the need for mental health services. The applicant's records also reflected the applicant was command referred to ADAPT due to a positive urinalysis for cocaine and he endorsed cocaine use on divers occasions. The records reflected the applicant deferred and then declined ADAPT services.

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

A review of the applicant's records revealed he was discharged with a UOTHC characterization of service due to misconduct (drug abuse). There is evidence the applicant was referred to and received mental health services during confinement for misconduct and military legal proceedings. While confinement and military legal proceedings can be stressful, they do not constitute a mental health condition that mitigates the misconduct. There is no evidence a mental health condition caused or mitigated the misconduct that led to the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

There is no evidence to substantiate the applicant's contention that he had a mental health condition in service that caused or mitigated the misconduct that led to his discharge. Because the applicant's discharge is not mitigated or excused, it is also not outweighed.

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 found no evidence of impropriety or inequity.

FINDING: The DRB voted unanimously to *deny* 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 or 3K.

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, 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 25 July 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)

