

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT	CASE NUMBER FD-2023-00149
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SUMMARY:

The applicant was discharged on 28 June 2010 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airman* with a General 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 appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 18 July 2023. No 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 multiple Article 15s, and multiple Letters of Counseling. His misconduct included: Tested positive for Tetrahydrocannabinol (THC); Physically controlled a vehicle while drunk; drunk and disorderly; failed to report on time to the appointed place of duty; failed to obey supervisor's instructions; failed to report at the time prescribed to the appointed place of duty; consumed alcohol under the age of 21; unlawfully struck and Airman on the head with his fist.

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 his service in the Air Force was Honorable. He explained that he suffered from depression after being falsely accused of rape and his service being cut short due to DOS rollbacks. He indicated that a week before his separation, he smoked marijuana to cope with his depression. He stated that due to this, they rushed an administrative discharge for Drug Abuse just prior to his DOS.

During the personal appearance the applicant provided sworn testimony. He explained that he was ostracized by the Airmen due to the false accusation. They did not get his side of the story. The applicant felt that this accusation led to his ultimate demise because the stress of it created his depression. He claimed that this depression is what caused the misconduct. The applicant also explained that he smoked marijuana a week prior to his Date of Separation because he was trying to cope and clear his head so he could figure out how to deal with being separated. The applicant concluded by stating that his service was overall honorable and the narrative reason of "Misconduct (Drug Abuse)," was harsh and he was not a drug abuser.

The DRB reviewed the applicant's entire service record and considered his testimony during the personal appearance but found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The applicant had an extensive pattern of misconduct during his three (3) years of service. Through progressive discipline, the applicant had ample opportunities to change his negative behavior. The Board concluded the negative aspects of the applicant's service outweighed the positive contributions he made during his Air Force career.

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 have a condition or experience that may excuse or mitigate the discharge?

The applicant checked the box for "other mental health" on the application. The applicant contended "I was suffering from depression while in the air force after I was falsely accused of rape by a fellow airman." The applicant also contended "The charges were dropped for it was a video of the whole situation, and she decided not to go through with her lies however, I was still made to sign an Article 15 for the incident." The applicant also contended "I joined during wartime with the thought and intention to go overseas and help out to the best of my abilities. I was depressed for I was a part of a DOS rollback and was forced to get out of the Air Force 17 years early... I was being medically treated and seen by a psychologist for major depression disorder at the time of my discharge. I smoked some marijuana one time the weekend before my discharge to get over the depression, I was summoned upon the week of my discharge to take a drug test."

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

A review of the applicant's records revealed the applicant was Command referred on two separate occasions to ADAPT services due to alcohol related misconducts. A review of the applicant records revealed the applicant did not endorse any mental health symptoms to any ADAPT provider. The applicant's records revealed the applicant voluntarily sought mental health services after he was informed he would be separated and was also referred for further evaluation after the applicant's positive drug test. A review of the applicant's records revealed the applicant was given the diagnosis, in service, of malingering. There is no evidence the applicant exhibited any clinically significant features of major depressive disorder, or any other mental health condition, during his time in service. There is no evidence or records to substantiate the applicant's contention that he developed major depressive disorder during his time in service.

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

A review of the applicant's records revealed the applicant was discharged with a General character of service due to misconduct (drug abuse) with three years, three months, and two days times in service. A review of the applicant's records revealed a pattern of maladaptive substance use and substance related misconducts that persisted for the near-duration of the applicant's time in service.

There is no evidence the applicant exhibited any clinically significant features of major depressive disorder, or any other mental health condition, during his time in service. There is no evidence or records to substantiate the applicant's contention that he developed major depressive disorder during his time in service.

The applicant submitted evidence of his VA rating as evidence to substantiate his claim. Regarding the applicant's concurrence with his VA rating, 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(s) which led to the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated, 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.

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 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.

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 "General," the narrative reason for separation shall remain "Misconduct (Drug Abuse)," and the reentry code shall remain "2B." 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)

