

<b>AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT</b>	<b>CASE NUMBER</b> <b>FD-2023-00192</b>
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**SUMMARY:** The applicant was discharged on 30 July 2021 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of his discharge characterization and a change to the discharge narrative reason and associated separation 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 24 August 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 reenry 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 an Article 15 for wrongful use of marijuana.

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 his discharge was inequitable because it was based on one isolated incident in his nearly four years of service and arose from a misdiagnosed medical condition. He further contended his command knew about his mental health condition for two years and did nothing to help him, and he was unable to receive proper medical care.

A review of the applicant's record revealed he was punished under Article 15 for wrongful use of marijuana. In his response to the Article 15 he claimed he was in extreme pain following two surgeries. He claimed he repeatedly informed his medical providers, and they did nothing to help him. Therefore, he resorted to using marijuana to relieve his pain. He submitted his DVA letter and has been given a combined disability rating for both physical and mental health related conditions.

**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 boxes for "PTSD" and "other mental health" on the application. The applicant contended "my discharge is inequitable because it was based on one isolated incident over 43 months of service arising from a misdiagnosed medical condition that resulted from service, that command knew about for two years, and for which I now have a 70% VA disability rating." The applicant also contended "my discharge was inequitable because it arose from a mental health condition stemming from my inability to receive proper medical treatment for the medical condition that arose in service."*

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

*The applicant's records reflected he intermittently sought and received mental health services both on and off base during his time in service. The applicant's records reflected he reported symptoms of frustration and low mood related to occupational stressors and dissatisfaction with being in the military.*

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

*A review of the applicant's DD214 revealed he was discharged with a General characterization of service due to misconduct (drug abuse). The applicant indicated in his response to the discharge notification that he used marijuana to deal with physical pain (testicular). The applicant contended that his mental health declined as a result of his physical ailment and pain. The applicant's records reflected he was resistant and at times non-compliant with medical recommendations for his medical issue. Based on review of the available records the applicant indicated he used marijuana to alleviate physical pain related to his medical issues. The applicant's use of marijuana as he contended, to alleviate the pain of a medical condition, is not considered under the intent of liberal consideration. The applicant's records also reflected he intermittently sought and received mental health services both on and off base during his time in service related to symptoms of anxiety and dissatisfaction with being in the military. 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?

*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 and did not find any evidence of impropriety or inequity.

**FINDING:** The DRB voted unanimously to **deny** the applicant's request to upgrade his discharge characterization to Honorable and to change the discharge narrative reason and associated separation code to Secretarial Authority. The DRB also voted unanimously to **deny** changing the reentry 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, 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 28 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)

