

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT	CASE NUMBER FD-2023-00195
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SUMMARY: The applicant was discharged on 3 December 2020 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.

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 reentry 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 and multiple Letters of Reprimand. His misconduct included failure to go, dereliction of duty, and 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 he was an outstanding Airman, and one mistake should not overshadow his good service in the Air Force. He requested an upgrade to pursue a college degree.

A review of the applicant's records revealed he was a passenger in a privately owned vehicle that was stopped by security forces personnel for a traffic violation. The security forces patrolman smelled marijuana in the vehicle and also observed a bag containing a green leafy substance in the vehicle. Search authorization was obtained, and the applicant tested positive for marijuana. He was punished under Article 15 and administratively discharged. He also had other minor misconduct prior to the marijuana use. He claimed in his response to the Article 15 that he did not knowingly ingest marijuana. The applicant submitted a copy of his military medical record and his DVA letter that indicated he had a service-connected disability rating but did not identify the condition(s) he was diagnosed with.

LIBERAL CONSIDERATION:

Due to the applicant's contention he had a mental health condition, 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 made no other mental health contentions on his application and contended “During my service, I was an outstanding Airmen and I do not believe one mistake should overshadow my good service in the Air Force. This change would open up more opportunities for me and my family in the future. Outside of the Air Force, before joining and while I was in, I have never been in any type of trouble and if my request is granted, I will continue to pursue a Bachelor’s Degree in Cybersecurity.”

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

There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited any clinically significant features of a mental health condition, during his time in service.

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

There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited any clinically significant features of a mental health condition, during his time in service. A review of the applicant’s pre-service records revealed the applicant reported a history of marijuana use. 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 misconduct is not mitigated by a mental health condition, the applicant’s discharge 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. The DRB also voted unanimously to **deny** changing the discharge narrative reason and 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://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)

