

**SUMMARY:**

The applicant was discharged on 18 August 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.

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 12 October 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 a Letter of Reprimand. His misconduct included: Wrongfully possessed marijuana or its derivative at a treatment center; speeding at 93 MPH in a 45 MPH zone; open container of an alcoholic beverage; possession of marijuana; recorded a breath alcohol concentration of 0.14; Failed to report for duty, was late by 90 minutes; was late at least two other instances.

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 offered no contentions, only that the mother is looking for what happened that led her son to be placed in rehab. She indicated that he returned home with a mental health condition, very angry, hearing voices and speaking to the air with no one in the room.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The applicant was fully aware of the Air Force policy of zero tolerance for illegal drug use. Despite this policy, the applicant made a decision to use illegal drugs. The Board found the negative aspects of his willful misconduct outweighed the positive aspects of his military service.

The Board also wanted to note that it is not an investigative body; therefore, is not able to oblige the request of the applicant's mother regarding why her son returned home with mental health conditions. The Board concluded that the discharge received was 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:

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, through representation, contended (in part) "We have not been told the whole store, but an incident happened that led him to be placed in a rehab center over in North Carolina. We were told it was alcohol, but we know that there's no history of alcoholism prior to entry. My son return home with a mental condition, very angry, hearing voices, speaking to the air no one in the room. He has not be able to hold down any employment for longer than three months. We have reach out to the VA clinics for help but has been turn down due to no medical card."*

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. There is no evidence a mental health condition caused or mitigated the misconduct that led to the applicant's discharge. There is no evidence to substantiate the applicant's contention that he had a mental health condition in service.*

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

*A review of the applicant's DD-214 revealed the applicant was discharged with a General character of service due to misconduct (drug abuse) with one year and eight days' time in service. The applicant's records reflect the applicant endorsed a pattern of maladaptive alcohol and drug use during his time in service and he was accordingly referred to a treatment program that he was subsequently administratively discharged from due to misconduct and continued substance use. A review of the applicant's pre-service records reflected a history of marijuana use, alcohol use, and pre-service legal involvement related to marijuana use. There is no evidence the applicant exhibited or endorsed any clinically significant indicators of a mental health condition during his time in service. There is evidence the applicant chose to use alcohol and drugs in a way that was incompatible with military service, which may explain the applicant's drug use, but it does not mitigate the applicant's misconduct.*

*The applicant submitted his VA rating as evidence in support of his claim. Based on the available evidence and records, the applicant's mental health condition as likely as not developed post-service. Regarding the applicant's concurrence with his VA diagnoses, 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 and found no evidence of inequity or impropriety.

**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 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 "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 1 November 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)

