

SUMMARY:

The Applicant was discharged on 8 July 2021 per 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 requested that the Board be completed based on a records-only review. The Board convened on 9 May 2024. Counsel represented the Applicant.

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, including evidence submitted by the Applicant. The Board thoroughly reviewed 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 using 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 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 requested an upgrade to his discharge characterization due to the circumstances surrounding his discharge. The Applicant described how he felt blackmailed into doing cocaine by a manipulative ex-girlfriend who threatened to tell his commander he was doing drugs and battered him. He stated that he eventually called the police, and the police arrested her. The Applicant explained that the ex-girlfriend notified his Command and told them that he had used cocaine. He proactively contacted his Command to explain the circumstances of the use. The Applicant also explained that he requires an honorable discharge characterization to work as an airline or railroad maintainer.

The Board denied the Applicant's request because he failed to present substantial, credible evidence that his discharge characterization is inequitable. DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E3.2.12.6. However, the Board determined that the Applicant provided substantial credible evidence that his narrative reason is inequitable.

LIBERAL CONSIDERATION:

Due to evidence of a mental health diagnosis and/or experiences of sexual assault or sexual harassment and/or records documenting that one or more symptoms of mental health conditions and/or experiences of sexual assault or sexual harassment existed/occurred during military service found in the Applicant's 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, psychiatrist, or social worker with training on mental health issues connected with post-traumatic stress disorder (PTSD), traumatic brain injury (TBI), or other trauma. 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 PTSD, 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 boxes for "PTSD" and "Other Mental Health" on the application. The Applicant submitted multiple applications with multiple contentions. The Applicant contended on the application received 29 March 2023 that he is requesting an upgrade "for better employment a better quality of life for my two sons...I made a mistake, but since then, I have stayed clear of drugs, and I'm clean." Included on the application received on 18 October 2023, the Applicant contended he experienced "abuse and manipulation [that] kept me in fear of my life, and I made choices I would never have under normal circumstances." The Applicant contended, "She was involved in illegal drug use and, through her manipulation and abusive tactics, would urge me to partake as well."

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

A review of the Applicant's records revealed the Applicant was Command referred to ADAPT after disclosing to this Command that he used cocaine. As a result of his ADAPT referral, the Applicant also received mental health and Family Advocacy Program (FAP) services during his time in service. The Applicant's records reveal that the Applicant reported he was engaged in a dysfunctional relationship with his girlfriend that resulted in him experiencing physical and mental abuse. The Applicant received inpatient and outpatient mental health services during his time in service. However, he noted he requested inpatient mental health services only as a way to get away from his girlfriend in a secure location. The Applicant did not receive a mental health diagnosis during his time in service.

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

A review of the Applicant's DD214 revealed that the Applicant was discharged with a general character of service due to misconduct (drug abuse) with three years, eleven months, and twenty-one days in service. A review of the Applicant's discharge package revealed that the commander stated, "Amn Espinoza stated that the drug use does not reflect his true character. Specifically, Amn Espinoza indicated that his drug use stemmed from a relationship that he is no longer in. Further, Amn Espinoza stated that he will not use drugs again." The Applicant's commander also opined, "Apart from his drug use, Amn Espinoza has no other disciplinary paperwork. Therefore, his conduct does not sufficiently constitute a departure from the conduct expected of Airmen significant enough to warrant a UOTHC service characterization. However, his service is not so meritorious as to merit an honorable service characterization. Amn Espinoza's wrongful use of cocaine is significant negative conduct, and I recommend characterizing his service as general (under honorable)." Based on a review of the Applicant's records, the Applicant's experience in intimate partner violence was known and fully considered by the Applicant's Command during the discharge process. The Applicant was discharged due to drug use. There is evidence that the Applicant reported his drug use was due to a dysfunctional relationship, and the Applicant's Command considered this at the time of his discharge in their decision to characterize the Applicant's service as general.

4. Does that condition or experience outweigh the discharge?

Based on a review of the Applicant's records, the Applicant's experience in intimate partner violence and its role in the Applicant's choice to use cocaine was known and fully considered by the Applicant's Command during the discharge process. The Board found the Applicant's narrative reason for separation to be outweighed by the impact of his contended experience of intimate partner violence.

EQUITY ANALYSIS:

The Applicant did not submit an issue of propriety, and the Board did not rely upon any such issue in its decision. DODI 1332.28 E3.5.4.

The Board examined the Applicant's arguments and evidence under the equity factors found in DODI 1332.28, E4.3. The Board partially accepted the Applicant's equity-issue positions based on these factors. DODI 1332.28 E3.5.6.1.

DODI 1332.28 states that the discharge is presumed equitable. E4.3. The Board must deem a discharge inequitable if there are new policies applicable granting further benefits (E4.3.1), the discharge was inconsistent with standards of discipline (E4.3.2.), or the discharge can now be seen as inequitable even though it was equitable at issuance based on specified factors (E4.3.3).

After reviewing the Applicant's records and contentions, the Board determined that the equitable factors in DODI 1332.28 did not favor full relief. The Board considered the following:

E4.3.1. Existence of new policies:

The Board is unaware of any new policies that would have granted the Applicant further benefits, and the Applicant did not identify any.

E4.3.2. Consistency with Air Force disciplinary standards:

The Applicant was discharged after a positive urinalysis result for cocaine. His commander ordered the urinalysis after the Applicant informed his first sergeant that his ex-girlfriend blackmailed him with photos and videos of him using cocaine. The Board considered the following sequence of events:

- Jan-Feb 2021: The Applicant asked his first sergeant and hotel security to help escort his ex-girlfriend from his hotel room while TDY.
- 7 March 21: The Applicant's ex-girlfriend called his first sergeant and stated she had photos and videos of the Applicant doing cocaine.
- 19 March 21: The Applicant was given a command-directed urinalysis and tested positive for cocaine
- 5 May 21: The Applicant's Command notified him of the Article 15 for cocaine use between 5 March and 19 March 2021.

Based on this sequence of events, the Board determined that the Applicant's commander thoroughly investigated a very delicate situation. This investigation confirmed for the Board that the Applicant's discharge was consistent with Air Force disciplinary standards.

E4.3.3. Factors revealing inequity even if the discharge was equitable at issuance:

The Board also considered factors that would tend to relief even if the Applicant's discharge was equitable at the time of issuance. Among other factors, the Board considered the following:

E4.3.3.1: Quality of Service:

The Applicant has a high quality of service, reflected by an early promotion and top ratings on his EPRs.

E4.3.3.2: Capability of service:

E4.3.3.2.1: Total capabilities: The Applicant submitted many character references, filed in response to his discharge, attesting to his positive character and hard work.

E4.3.3.2.2.: Family and personal problems: The Applicant attributes his misconduct to extortion by a disgruntled ex-girlfriend. The Applicant was about 23 when the misconduct occurred, and a witness stated that the ex-girlfriend was about 18.

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 at least the following factors to be relevant to the Applicant's case:

6a. Military custom honors sacrifices and favors second chances: The Board considered that the Applicant's commander relied on a urinalysis that revealed drug use after the Applicant requested his Command's help to remove his ex-girlfriend from his hotel room. The Board determined that the Applicant was provided a second chance.

7h. Necessity of relief: The Board recognized the Applicant's contention that he required an honorable service characterization to join his desired trades. However, the Applicant did not present evidence of this, such as an offer letter or workplace policy, and thus failed to provide substantial credible evidence of inequity.

7o. Youthful indiscretion: The Board noted that the Applicant was 23 at the time of the misconduct and determined that the vast majority of 23-year-old airmen have sufficient discretion to avoid cocaine use.

7p. Character references: The Board reviewed the Applicant's character references filed during his discharge proceedings but did not find them persuasive enough in comparison to the severity of cocaine use to warrant an upgrade.

In conclusion, the Board considered that a General (Under Honorable Conditions) characterization is appropriate when "when the positive aspects of the enlisted Service member's conduct or performance of duty outweigh negative aspects of the enlisted Service member's conduct or performance of duty as documented in their service record." DODI 1332.14, *Enlisted Administrative Separations*, at page 30 (paragraph 3(b)(2)(b)). In contrast, an Honorable characterization is appropriate "when the quality of the enlisted Service member's service generally has met the standards of acceptable conduct and performance of duty for military personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate." *Id.*

The Board concluded that the Applicant did not generally meet the standards of acceptable conduct by his drug use. To be eligible for an Honorable characterization, the service must be so meritorious that a "General" characterization would be clearly inappropriate, and the Applicant failed to present "substantial credible evidence" to the contrary. DODI 1332.28 E3.2.12.6.

However, the Board determined that the Applicant provided substantial credible evidence to show that his narrative reason is inequitable.

FINDING: The DRB unanimously denied the Applicant's request to upgrade his discharge characterization. The Applicant did not request an upgrade to his reentry code, and the DRB voted unanimously to **deny** an upgrade. However, the DRB voted unanimously to **approve** a change to the reason for the discharge narrative.

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).

Per 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, including the Applicant's issues, summary of service, service/medical record entries, and discharge process, the Board found the discharge was inequitable. Therefore, the awarded characterization of service shall remain "General," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall remain "4H." The Presiding Officer approved the Air Force DRB (AFDRB) results on 14 May 2024. 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)