

SUMMARY:

The applicant was discharged on 20 June 2016 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, a change to the discharge narrative reason, and a change to the reentry code.

The applicant was represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 21 September 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 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 an Article 15. His misconduct included: 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 through counsel contended that when applying DRB policy and considering the Hagel, Kurta, and Wilkie memoranda, the discharge should be upgraded to Honorable based on inequity. Additionally, they indicated that the applicant's service, documented PTSD symptoms, post-incident behavior, and the relatively minor nature of the misconduct make the applicant a prime candidate for an upgrade. They concluded by explaining that the impact of the discharge is disproportionate to the offense that the applicant committed.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. Despite the applicant being fully aware of the Air Force policy of zero tolerance for illegal drug use, the applicant chose to use. The discharge the applicant received is proportionate to the offense committed and is not disparate to similarly situated service members.

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 "PTSD" on the application. The applicant, through counsel, contended (in part) "...despite his consistently high level of achievement, he was experiencing serious symptoms of what would later be diagnosed as PTSD. When counseling and medication failed to alleviate his anxiety, depression, and anger, he resorted to using marijuana for a very short time."

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

There is no evidence or records to indicate that the applicant has exhibited or endorsed any clinically significant indicators of PTSD; the applicant's in service and available post-service records reveal the applicant self-reported a diagnosis of PTSD but there is no evidence or records the applicant has received a diagnosis of PTSD. There is evidence the applicant has received the diagnoses, in-service of cannabis misuse, and adjustment disorder.

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 four years, three months, eight days' time in service.

A review of the applicant's records revealed the applicant endorsed symptom development in response to marital and financial stressors that persisted for the duration of his time in service. The applicant's in-service records revealed the applicant endorsed a life-long pattern of anger management issues and reported to providers his primary stressors to be lack of a unified vision with his spouse and occupational pressures. The applicant's records revealed the applicant was engaged in intensive mental health services at the time he chose to use marijuana and while the applicant's marital discord work stress may explain the applicant's marijuana use, it does not mitigate the applicant's misconduct. There is no evidence of a mitigating nexus between the applicant's in service mental health condition and the misconduct for which he was discharged.

The applicant submitted his VA rating as evidence in support of his claim. Regarding the applicant's concurrence with his VA ratings which did not reveal a diagnosis of PTSD; rather, indicated the applicant was rated for PTSD "claimed as depression with anxiety and sleep disturbance". 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 of a mitigating nexus between the applicant's in service mental health symptoms and the misconduct for which he was discharged.

4. Does that condition or experience outweigh the discharge?

Because the applicant's condition does not mitigate his discharge, it does not outweigh his discharge.

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 26 September 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)

