

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT	CASE NUMBER FD-2023-00231
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SUMMARY: The applicant was discharged on 16 December 2022 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 associated separation code, and a change to the reentry 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 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 for Wrongful use of delta-9-tetrahydrocannabinol.

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 made no specific contention. He submitted excerpts from an Inspector General (IG) complaint that he filed against his command. He alleged mistreatment by his command and disregard for his wellbeing.

A review of the applicant's records revealed he was observed leaving a restroom where a strong odor of marijuana was present. His bag was searched, and several items of paraphernalia associated with smoking marijuana were found. A search authorization was obtained for urinalysis testing and his test came back positive for marijuana. He was punished under Article 15 for wrongful use of marijuana. He contended in his response to the discharge action that he had significant mental health issues that were not taken seriously, and he was self-medicating with marijuana to relieve his symptoms. He also contended he should have been considered for a Medical Evaluation Board (MEB) for both mental and physical conditions, but instead was administratively discharged without being afforded the opportunity for dual-action processing.

The applicant's medical records were reviewed, and no evidence of any qualifying medical board conditions were present. The applicant was medically cleared for separation.

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 box for "other mental health" on his application. The applicant submitted his in-service IG complaint as his personal statement in which he claimed financial, relational, and substance misuse issues led to his suicidal ideations and requested he be medically retired rather than discharged for misconduct.

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

Based on a review of the applicant's records, the applicant received mental health care during his time in service. The applicant's records reflect he self-referred to the mental health clinic and requested to go to inpatient treatment after he came under investigation. The applicant's records reflected he received inpatient services and partial hospitalization services during his time in service. The applicant's records also reflected he was medically referred to ADAPT services and participated in outpatient services. A review of the applicant's records indicated the applicant received the diagnoses, in service, of adjustment disorder, and alcohol dependence.

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 characterization of service due to misconduct (drug abuse). The applicant stated in his response to the discharge notification that he believed his drug use to be due to a mental health condition and requested a medical discharge in lieu of administrative separation. The applicant stated in his response to the discharge notification that he was experiencing psychosocial stressors that led to his use of marijuana including a paternity situation, a car accident, loss of transportation, being declined Air Force aid four times, and health issues. A review of the applicant's in-service mental health records revealed he was evaluated on multiple occasions during his time in service and was found by providers to be seeking a medical discharge and did not meet criteria for any unfitting conditions that would have warranted a medical board.

There is evidence the applicant reported sleep difficulties, poor concentration, intermittent physical pain related to his job duties and legal problems to medical and mental health providers during his time in service. The applicant's records also revealed the applicant reported a pre-service history of marijuana use, which may explain the applicant's drug use, but it does not mitigate the applicant's misconduct. There is no evidence a mental health condition caused the misconduct that led to the applicant's discharge. There is evidence the applicant exhibited and endorsed poor coping skills which may explain the applicant's misconduct and choice to use marijuana, but it does not constitute a mental health condition that mitigated the misconduct that led to the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Based on review of the applicant's records, his mental health conditions were known and fully considered by the applicant's command during the discharge process. The applicant's request for a medical retirement is outside the scope of the Discharge Review Board. Should the applicant wish to request a change to his discharge to reflect a medical retirement, the Board refers the applicant to the Board for Correction of Military Records (BCMR) for this consideration. No error was found in review of the applicant's records; thus the applicant's discharge is 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, to change the discharge narrative reason and associated separation code to Secretarial Authority, and to change the reentry code to 2C or 3K.

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)

