

SUMMARY: The applicant was discharged on 07 November 2013 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 28 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 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 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 that he had undiagnosed PTSD that led to his drug use. He claimed it was a one-time isolated incident that he truly regretted. He requested an upgrade to allow him access to Department of Veterans Affairs (DVA) educational benefits to complete a higher education degree.

A review of the applicant's record revealed he had a positive urinalysis test for marijuana and was punished under Article 15, UCMJ. He claimed in his response to the discharge action that he was home on leave after a deployment and smoked marijuana while impaired by alcohol. He claimed to have no recollection of smoking until his urinalysis test came back positive. He contended that he was dealing with feelings of anxiety due to a recent divorce, death of a family member, and injury that occurred while he was deployed. He submitted his DVA rating letter and is 70% service-connected for PTSD.

LIBERAL CONSIDERATION:

Due to the applicant's contention of 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 "PTSD" on the application. The applicant contended "Inequitable discharge based on an isolated event that occurred three years into my six year commitment. Prior to this event, I had an excellent service record with no other negative circumstances. The event was the result of many life alternating episodes that have now been diagnosed as PTSD."

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 any other mental health condition during his time in service. The applicant's records revealed he was command referred to ADAPT due to a positive drug screen and denied any mental health symptoms for the duration of his time in the ADAPT program.

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

The applicant's DD 214 revealed the applicant was discharged with a General character of service due to misconduct (drug abuse). A review of the applicant's records revealed he tested positive for marijuana after returning from leave. The applicant stated in his response to the discharge notification that he smoked marijuana with his brother while in a social setting while on leave. There is no evidence to substantiate the applicant was self-medicating an underlying mental health condition.

The applicant submitted his DVA rating as evidence in support of his claim. A review of the applicant's post service records, as was the same with his in-service records, did not reveal any mental health treatment or diagnoses, which is not a requisite for liberal consideration. However, a review of the available records not only did not reveal any history of mental health treatment or diagnosis but was void of evidence of the applicant endorsing or exhibiting clinically significant indicators of a mental health condition during his time in service. Regarding the applicant's concurrence with his DVA rating, the DVA, 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 DVA 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 he had a mental health condition that caused or mitigated the misconduct which led to his applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Based on the available records, there is no evidence a mental health condition caused or mitigated the misconduct that led to the applicant's 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 associated separation code, 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 and associated separation code 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 03 October 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)

