

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT

SUMMARY: The applicant was discharged on 17 December 2020 in accordance with Air Force Instruction 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members*, with an Entry Level Separation (ELS) for Misconduct (Drug Abuse). The applicant appealed for a change to his discharge narrative reason and a change to the separation and reentry codes.

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 05 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 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 he was informed his discharge and reentry code would not hinder him from rejoining another branch of service, so he did not appeal the decision at the time of his discharge. The applicant submitted a statement with his application admitting to testing positive for marijuana upon arrival at his new unit to await a basic military training class date. He claimed he had learned from his mistake, grown from the experience, and deeply regretted his actions. He further claimed he had passed multiple drug tests with Army recruiters and successfully completed physical and health screening. He requested a change to his discharge to allow him to reenlist.

Upon review of the applicant's service record, the board was not able to find any documentation regarding the discharge. Since the board relies on the presumption of regularity, it concluded the discharge received by the applicant was appropriate. However, the applicant submitted multiple character reference letters with his application that all support him to remain in the Air National Guard.

The Board considered the available records, the applicant's statement and character reference letters, and the recent change to Air Force policy. Specifically, DAFMAN 36-2032, *Military Recruiting and Accessions*, Attachment 8, and DAFMAN 36-2032 Guidance Memorandum, dated 28 April 2023. This guidance establishes a pilot program that lifts the permanent ban on enlistment as written in paragraph 3.6.10 for applicants who test positive for tetrahydrocannabinol (THC), Cannabidiol (CBD), other marijuana byproducts, or its derivatives during accession physical examination at the Military Entrance Processing Station (MEPS) and provides for an opportunity to retest in accordance with the guidance contained herein.

In making their decision regarding the applicant's request to change his reentry code, the Board also 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 concluded it is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to *favor second chances* in situations in which individuals have paid for their misdeeds. Additionally, relief is generally more appropriate for non-violent offenses than for violent offenses. Furthermore, the Board determined the applicant accepted responsibility for his misconduct and showed significant remorse for his actions. Finally, the Board also considered changes in policy, whereby a Service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the applicant received, may be grounds for relief.

FINDING: The DRB voted unanimously to **approve** the applicant's request to change his reentry code. The DRB voted unanimously to **deny** changing the narrative reason and associated separation 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 granted relief on the basis of equity and clemency. Therefore, the awarded characterization of service shall remain "Entry Level Separation," the narrative reason for separation shall remain "Misconduct (Drug Abuse)," and the reentry code shall change to "3K." The Air Force DRB (AFDRB) results were approved by the board president on 10 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://afrbportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)