

**SUMMARY:** The applicant was discharged on 13 September 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.

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 reenry 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 made no contentions. He submitted a Department of Veterans Affairs (DVA) rating letter and had been given a 100% service-connected rating for unspecified trauma and stressor related disorder.

A review of the applicant's record revealed he was punished under Article 15, UCMJ for wrongful use of marijuana. He was subsequently discharged for drug abuse. Additionally, he had a referral performance report for receiving a Letter of Reprimand for dereliction of duty.

**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 "PTSD" on the application. The applicant made no additional claims or contentions regarding his request for relief. The applicant submitted a screenshot of his DVA rating and three character reference letters as evidence in support of his claim.*

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

*A review of the applicant's records revealed he sought mental health services during his investigation and discharge process. The applicant's records revealed he reported symptoms of anxiety and depression related to being caught smoking marijuana and facing administrative separation. The applicant's military records revealed he received the diagnosis, in-service, of adjustment disorder.*

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

*A review of the applicant's DD 214 revealed he was discharged with a General character of service due to misconduct (drug abuse). The applicant's records revealed he reported to his mental health provider during his time in service that he was distressed about getting caught smoking marijuana and was experiencing symptoms of nightmares and anxiety. The applicant's records revealed his symptoms developed after, and in response to, his misconduct. There is no evidence or records a mental health condition caused or substantially contributed to the misconduct that led to the applicant's discharge.*

*The applicant checked the box for PTSD and submitted his 2021 DVA rating as evidence in support of his claim. There is no evidence the applicant received the diagnosis of PTSD 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 the applicant had a mental health condition that caused or mitigated the misconduct which led to his discharge.*

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. The DRB also voted unanimously to **deny** changing the discharge narrative reason and 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 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

