

SUMMARY:

The applicant was discharged on 07 July 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 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 12 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 applicant's record of service included an Article 15, a Letter of Reprimand, and multiple Letters of Counseling. His misconduct included: Wrongfully used marijuana; wrongfully possessed some amount of marijuana; Failed dorm inspections. Was told to clean it and his room would then be re-inspected. Failed the re-inspection; Facial hair not maintained within acceptable standards per guidance of the medical waiver; Lied to an NCO about having an appointment; Failed a dorm inspection after being verbally counseled to get the room into inspection order. Failed a second and third time.

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 indicated that he was diagnosed with several mental health issues and has been to a recovery program as well as other behavioral for symptoms. He made no contentions.

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 having knowledge of the Air Force policy of zero tolerance for illegal drug use, the applicant made a decision to use marijuana. The discharge received was deemed appropriate for the misconduct committed.

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 boxes for "PTSD" and "Other mental health" on the application. The applicant contended "Veteran has been diagnosed with Adjustment disorder with mixed anxiety and depressed mood while on active duty and PTSD, aquaphobia, suicidal ideation, major depressive disorder, anxiety disorder, bipolar disorder, panic disorder, psychosocial disorder, with cannabis dependency. Veteran has been to a Trauma Recovery Program and well as other Behavioral for symptoms. Others issues existed at the time of service."

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

A review of the available records revealed the applicant sought and received mental health services during his time in service. The applicant's records reflect he attended one session in 2020 and requested medication for reported symptoms of low mood; the records reflect the applicant did not pick up the prescription from the pharmacy and did not follow-up with the prescriber. The applicant's records also revealed the applicant sought mental health services after he was notified, he was to be administratively separated for misconduct, drug use. The applicant's records revealed the applicant deferred and then declined the command directed ADAPT referral for substance use services and reported to his providers that he was experiencing symptoms of anxiety and depression but was continuing to use marijuana. The applicant's records revealed the applicant received the diagnoses, in service, of unspecified depression and unspecified anxiety. There is no evidence or records the applicant received the diagnosis, in service, of PTSD. The applicant's records revealed the applicant reported a distressing event occurred while on deployment but denied interest or resources to discuss trauma.

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

A review of the applicant's DD214 revealed the applicant was discharged with a General character of service due to misconduct (drug abuse) with four years, eleven months, and thirteen days' time in service.

There is evidence the applicant adjusting to the military lifestyle. The applicant's records reflect the applicant denied any mental symptoms or concerns on his post-deployment evaluations although his records revealed he sought one session of mental health services in 2020 to request medication for symptoms of low mood. The applicant's records reflect the applicant did not pick up the prescribed medication. The applicant's records revealed he was provided with information on mental health resources including MFLC, BHOP, and the mental health clinic and offered appointment scheduling during his time in service and declined or did not follow up.

The applicant's records revealed the applicant returned to the mental health clinic after he was notified of his discharge for misconduct (drug abuse) and endorsed symptoms of depression and anxiety that he believed to have persisted for the duration of his time in service. The applicant's records also revealed the

applicant's command had notified the applicant of their intent to deny reenlistment prior to his misconduct of possessing and smoking marijuana in the dorms. The applicant's provider noted the applicant was resistant to engage in behavior change and reported he continued to use marijuana after he was notified of his discharge and stated to his providers that he preferred using marijuana to other therapeutic interventions that may better address his symptoms. Thus, the applicant's records reflect that although he knew of and had previously utilized the available resources for his reported symptom resolution he knowingly and willfully chose to use marijuana in a manner that is incompatible with the military lifestyle. The applicant's records revealed he acknowledged the services that were available to him but opted to continue smoking marijuana, which may explain his discharge, but it does not mitigate his discharge.

The applicant submitted his VA rating as evidence in support of his claim. Regarding the applicant's concurrence with his VA ratings, 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 from 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.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated by his mental health condition, his discharge 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 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 1 November 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)

