

**SUMMARY:**

The applicant was discharged on 30 November 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 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 a Special Court Martial Order and an Article 15. His misconduct included: Wrongful use of cocaine; willfully failed to refrain from driving while on base suspension.

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 suffered from an untreated mental health condition, and if he would've sought treatment, he would have been retaliated against and chastised. The applicant explained that this mental health condition resulted in suicidal ideations which eventually led to his misconduct. The applicant requested the upgrade so that he may use the GI Bill.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The Board found no evidence to indicate the applicant was unaware of the Air Force policy of zero tolerance for illegal drug use. It understood the applicant's present service characterization renders him ineligible for Department of Veterans Affairs education benefits. However, this is not a matter of inequity or impropriety which would warrant an upgrade.

## **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 box for "other mental health" on the application. The applicant contended "Veteran suffered from an untreated mental health condition due to my time in service. If I had received the treatment I would have been retaliated and chastise. My mental health condition caused me to have ideations of suicide which led to my misconduct."*

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

*A review of the available records revealed the applicant was command referred to ADAPT due to a positive drug test (cocaine), the applicant deferred substance use services pending the outcome of the investigation; the applicant's records also revealed the applicant self-referred to ADAPT while under deferment for alcohol misuse.*

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 two years, ten months, and twenty-seven days' time in service. The applicant's records revealed the applicant plead guilty at Special Court Martial to one count of wrongful use of cocaine. The applicant stated in his response to administrative discharge action "Although I have blacked out most of my memories from that night, I know that I only made that horrible decision because of how drunk I was." A review of the available records revealed the applicant denied any occupational or relational problems related to his alcohol use and reported he was experiencing stress related to family, occupational, and legal problems. The applicant denied any mental health symptoms when inquired by substance use providers and primary care providers; the applicant's records reflect the applicant declined referrals to mental health providers and declined need for mental health services during his time in service.*

*The applicant's records reflect the applicant's maladaptive substance(s) uses occurred in social party settings and there no evidence or records to substantiate the applicant's claim that a mental health condition caused or substantially contributed to the misconduct that led to his discharge.*

*The applicant submitted his VA rating as evidence in support of his claim. Regarding the applicant's concurrence with his VA rating, 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. 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 the applicant's 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, 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 14 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)

