

SUMMARY: The applicant was discharged on 28 July 2011 with a Bad Conduct Discharge after being convicted of wrongful use of cocaine during a Special Court-Martial. The applicant appealed for an upgrade of the 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 26 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 vacation of suspended non-judicial punishment, and a special court-martial conviction. The misconduct included: disrespect towards an NCO, failure to go, and wrongful use of cocaine.

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 DRB noted the applicant identified as female at the time of their service but have since changed their name and are referred to as "they" in their character reference letters.

The applicant contended during their time in the service they were outed and subjected to harassment from those above them. They claimed they were underqualified to perform their duties, and at a pace they could not keep up with. They further claimed they were subjected to racial and homophobic slurs and their mental health rapidly degraded leading to them making the choice to use drugs. They contended the consequences of their misconduct far exceeded the crime and barred them from reaching their life goals.

A review of the applicant's records revealed they were tried at a special court-martial on three charges and specifications of cocaine use. They were sentenced by a military judge to a Bad Conduct Discharge, forfeiture of pay, reduction to E-1, and 176 days confinement. Additionally, the records revealed they were absent without leave for two days and were also placed in pre-trial confinement for 45 days.

The applicant submitted some character reference letters that speak highly of them and their post-service conduct. Additionally, they submitted documentation they have completed a graduate degree. They request the upgrade to continue to work in the academic field.

LIBERAL CONSIDERATION:

Due to the applicant's contention of a mental health condition, and 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 boxes for "PTSD" and "other mental health" on the application. The applicant contended "During my time at Tinker AFB, I was outed and subjected to harassment from those above me which included work that I was underqualified to perform and a pace I could not keep up with. I was threatened with discharge by my first sergeant. I was subjected to racial and homophobic slurs, my mental health degraded rapidly which led me to make the poor choice of trying a hard drug as a poor coping mechanism, to which I became addicted."

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

There is no evidence the applicant exhibited or endorsed any clinically significant features of PTSD, during their time in service. There is no evidence or records to substantiate the applicant's contention that they developed PTSD during in-service. The applicant's records revealed they were seen in the mental health clinic in 2006 related to their commander having concerns about suitability for a security clearance, which was approved on appeal. The applicant's records also revealed they were seen for two sessions in the mental health clinic in June 2007 with reported frustrations of a work issue that was reported to be resolved by the applicant after the second session. The applicant was followed by the mental health clinic from April 2008 through their discharge subsequent to the applicant's investigation and court martial. The applicant's records indicated they participated in a sanity board and were evaluated by multiple mental health providers during their time in service. The applicant received the diagnoses, in service, of anxiety unspecified, major depressive disorder, cocaine abuse, and borderline personality disorder.

The applicant contended they experienced harassment during their time in service. The applicant stated "during my time at Tinker AFB I was outed and subjected to harassment from those above me which included work that I was underqualified to perform and a pace I could not keep up with."

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

A review of the available records revealed the applicant pled guilty to cocaine use on multiple occasions between November 2007 and May 2008. The applicant's mental health records during that time frame revealed their mental health and behavioral problems coincided with their cocaine use. Further, the applicant's records revealed they were diagnosed with borderline personality disorder during their time in service. The applicant endorsed a pre-service pattern of self-injurious (cutting) behavior that they did not disclose to MEPS. The applicant's in-service behavior corroborated the diagnosis of borderline personality disorder with the behavior pattern of intentionally lying about suicidal ideation to avoid incarceration, repeated use of illicit substances, verbal aggression, manipulative behaviors to avoid consequences,

indifference and rationalization of poor choices, affective instability, feelings of emptiness, and shifting and shallow expression of emotion.

The applicant submitted a letter from a civilian mental health provider who stated it was his opinion “due to experiences [the applicant] had while enlisted caused their diagnosis of Post Traumatic Stress Disorder.” No medical records or therapy notes were submitted to support this conclusion and the provider did not specify what “experiences” he was referring to that caused the applicant’s PTSD. Further, there is no evidence this opining provider treated the applicant during their time in service; thus, he may only speculate about the applicant’s mental health condition during their time in service. The provider noted he had been treating the applicant since December 2022, fifteen years post discharge.

There is evidence the applicant exhibited and endorsed features of a personality disorder during their time in service. The applicant’s personality disorder traits likely caused their behavioral and misconduct issues in service and are considered incompatible for military service. Personality disorders and traits are conditions of a developmental nature, they are pervasive, stable, persistent, and often resistant to treatment. This condition may explain the applicant’s misconduct, but it does not mitigate the misconduct.

Regarding the applicant’s contention that they experienced harassment during their time in service, this contention was considered by the board along with the available records for review. The applicant did not provide any evidence or records to substantiate their claim and submitted only one sentence of testimony, with no specific details about their experience of harassment other than the harassment included, “work that I was underqualified to perform and a pace I could not keep up with.” A review of the applicant’s EPRs revealed they were lauded for their work performance prior to their notification of non-selection for re-enlistment and subsequent onset of their cocaine use. The applicant’s later EPRs revealed they were disrespectful to leadership and were noted by raters to “blame any wrong doing on others instead of accepting responsibility for their actions.”

4. Does that condition or experience outweigh the discharge?

Because the applicant’s discharge is not mitigated by a mental health condition, their discharge is also not outweighed. In considering the totality of the applicant’s time in service, it is as likely as not their misconduct was caused or substantially contributed to by their unsuited personality disorder and choice to use cocaine on multiple occasions.

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. The Board also determined the applicant’s misconduct was egregious enough to warrant this type of discharge and there was not enough evidence of positive post-service conduct to grant clemency to overcome the misconduct.

FINDING: The DRB voted unanimously to **deny** the applicant’s request to upgrade the discharge characterization. The DRB also voted unanimously to **deny** changing the discharge narrative reason and changing 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 "Bad Conduct Discharge," the narrative reason for separation shall remain "Court-martial," and the reentry code shall remain "2L." The Air Force DRB (AFDRB) results were approved by the board president on 3 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)

