

SUMMARY:

The applicant was discharged on 26 July 2012 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Honorable Conditions (General) Discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of her discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 19 December 2023. No witnesses were present to testify on the applicant's behalf.

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 reenlistment eligibility 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 substantiated Air Force Office of Special Investigations (AFOSI) Report for distributing a schedule I, II, or III drugs and a Special Court Martial Report of Result of Trial. Her misconduct included: On divers occasions, wrongfully used a botanical incense or herbal mixture, known as Spice, in a manner to alter mood or function; Negligently failed to refrain from distributing a botanical incense or herbal mixture, commonly referred to as Spice; With intent to deceive, make a false official statement to a special agent of OSI, that she did not use any drugs or anything illegal since entering the Air Force, or words to that effect; and Wrongfully used 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.

On her DRB application, the applicant indicated that she was not properly diagnosed, and after a deployment, she self-medicated and sought help at Alcoholics Anonymous (AA) on base. The applicant concluded that in 2022, she was diagnosed with PTSD.

At her DRB personal appearance hearing, through sworn testimony, the applicant indicated that she was diagnosed with PTSD by the Department of Veterans Affairs, which confirms the symptoms she was trying to self-medicate. She felt she needed substance abuse treatment because she was drinking every day but didn't know why. She stated that the first time she abused drugs was when she drank too much at a party and unintentionally smoked marijuana and Spice. She recalled smoking marijuana and Spice around 8 times. When asked how she was referred to Air Force's Alcohol and Drug Abuse Prevention and Treatment

(ADAPT), she indicated that she never tested positive during an urinalysis and was never command referred, she just walked in the clinic to get help for her drinking. She concluded that command did not consider her mental health, as there was not a diagnosis while in service, so she felt she had a right to appeal the decision.

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 applicant's drug use in social settings is not mitigated by a mental health issue or condition. She was fully aware of the Air Force policy of zero tolerance for illegal drug use. Despite her above average service record, the misconduct outweighs the positive aspects of her career. Additionally, her decision to engage in in this type of misconduct does not align with the values and standards expected in the United States Air Force. Therefore, an upgrade to the reentry code could not be supported.

LIBERAL CONSIDERATION:

Due to evidence of a mental health diagnosis and/or experiences of sexual assault or sexual harassment and/or records documenting that one or more symptoms of mental health conditions and/or experiences of sexual assault or sexual harassment existed/occurred during military service found in the applicant's 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, psychiatrist or social worker with training on mental health issues connected with PTSD or TBI or other trauma. 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 PTSD; 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 "PTSD" on the application. The applicant contended "I was not properly diagnosed with PTSD after deployment, self-medicated and sought help at AA on base. I was diagnosed later in 2022 with service-connected PTSD."

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

A review of the applicant's medical records revealed the applicant was command referred to ADAPT and initially declined to participate in substance use services pending the outcome of her investigation. She later returned to ADAPT and engaged in services for maladaptive alcohol use. The applicant's in-service records revealed the applicant did not disclose Spice or marijuana use to ADAPT providers and reported the mental health symptoms of poor sleep and nightmares to mental health providers. The applicant was given the diagnosis, in service, of alcohol dependence.

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-year, nineteen days' time in service. The applicant's discharge package indicated the applicant pled guilty to four offenses by a special court-martial including making a false official statement, using marijuana, using Spice, and distributing Spice.

In the applicant's statement to AFOSI, she stated she used marijuana two times, once at a house party and once while playing darts; both a house party and playing darts are social settings and there is no evidence the applicant's marijuana use was related to self-medicating.

A review of the available in service and post service records revealed inconsistencies in the applicant's reporting of symptoms and circumstances. During the applicant's personal appearance hearing, the applicant denied she was command referred to ADAPT and stated she self-referred to ADAPT because she felt her alcohol use was getting out of hand. The applicant's records revealed the applicant was command referred to ADAPT as part of substance use investigation for marijuana and Spice use and distribution. The applicant's records are consistent for a pattern of maladaptive alcohol use that may have increased after her return from deployment. The applicant submitted a letter from an ADAPT provider during her time in service that stated the applicant met criteria for a diagnosis for Alcohol Dependence and may have symptoms associated with PTSD. The applicant's statements during her personal appearance hearing were inconsistent with the records available for review. The applicant stated during her personal appearance hearing that she only used Spice once and could not recall one of the two instances she used marijuana because she was very intoxicated and only smoke marijuana or Spice when she was intoxicated.

There is no evidence the applicant disclosed her marijuana or Spice use to the ADAPT providers as the applicant's substance use treatment was focused on her maladaptive alcohol use. Additionally, the applicant endorsed symptoms of poor sleep and nightmares; however, there is no nexus between the applicant's symptoms and her choice to use and distribute prohibited substances to her peers in a social setting. Premeditated misconduct, including distribution of illegal substances, is generally not mitigated by a mental health condition under the intent of liberal consideration. A review of the applicant's performance reports (EPRs) revealed no impairment in the applicant's ability to perform her duties and the applicant concurred during her personal appearance hearing that she was a high-quality performer during her time in the Air Force with only a few instances of being tardy to guard mount.

The applicant submitted her VA rating as evidence in support of her claim. Regarding the applicant's concurrence with her 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. Based on a review of the available records, there is no evidence of nexus between the applicant's in service mental health conditions and the misconduct that led to her discharge.

4. Does that condition or experience outweigh the discharge?

Because the applicant's condition is not mitigated, the applicant's 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 her 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 seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

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 Presiding Officer on 20 December 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)