

**SUMMARY:**

The applicant was discharged on 10 August 2021 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Honorable Conditions (General) Discharge In Lieu of Trial by Court-Martial. The applicant appealed for an upgrade of her discharge characterization and a change to the discharge narrative reason.

The applicant was represented by counsel.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 30 November 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 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, through counsel, contended that the discharge is inequitable because it was based on a single isolated incident of minor misconduct during nearly 5 years of honorable service with no other misconduct or adverse action. They contended that under current Department of Defense guidance, the applicant's discharge characterization should be upgraded based on her exemplary service record, her mental health conditions (which include PTSD-related conditions), and clear evidence of post-discharge rehabilitation.

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 recognized the applicant's time in service prior to the infraction and subsequent discharge, but concluded that the seriousness of her willful misconduct offset the positive aspects of her service. It also recognized an inconsistency in statements. Specifically, the applicant indicated during service that the ingestion was accidental, however, in the DRB application, the contention was that it was a one-time incident to cope with mental stressors. The Board determine that when considering the totality of the circumstances, the discharge the applicant received was appropriate.

**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, through counsel contended she was diagnosed with “PTSD-related mental health conditions” which were exacerbated by two significant life experiences during her time in service. These included her husband being diagnosed with cancer and a friend dying by suicide which “ultimately culminate in the momentary lapse in judgement which led to the single, isolated incident of minor misconduct for which she was discharged.”*

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

*Based on a review of the applicant’s in-service medical and mental health records, the applicant received mental health services during her time in service and reported to providers she was experiencing symptoms of stress and anxiety due to her husband’s health condition and being under investigation. The applicant’s medical records revealed the applicant received the diagnoses, in service, of adjustment disorder. There is no evidence the applicant received a diagnosis of PTSD during her time in service. There is no evidence the applicant endorsed nor exhibited any clinically significant indicators of PTSD during her time in service.*

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

*A review of the applicant’s DD214 and discharge documents revealed the applicant was discharged with a general service characterization in lieu of trial by court martial. The applicant’s discharge paperwork revealed the applicant was offered nonjudicial punishment but elected a trial by court-martial due to her claim that she did not knowingly ingest illegal or prohibited substances during her time in service. Later, the applicant submitted a request for discharge in lieu of a trial by court-martial, which was granted with a general service characterization with consideration of the facts and circumstances documented by the commander and through the legal review.*

*The applicant’s post-service contentions regarding her in-service substance use are contradictory to the records and contentions made by the applicant during her time in service. During the applicant’s time in service, she adamantly and willfully denied intentionally using marijuana. The applicant’s post-service account of her in-service drug use are vastly different. The applicant contends, through counsel, in her request to the Board for relief that “unique and truly unprecedented circumstances exacerbated [the applicant’s] diagnosed mental health conditions, including those related to PTSD, and ultimately culminated in the momentary lapse in judgment which led to the single isolated incident of minor misconduct for which she was discharged.”*

*The applicant, through counsel, contended the applicant’s discharge should be mitigated because in the time of her marijuana use, her husband had been receiving treatment for cancer since 2019 and learning of the death of a friend in June 2020. A review of the applicant’s in-service records revealed the applicant denied knowingly using marijuana. In the applicant’s request to the Board, the applicant, through counsel, contended the applicant use marijuana one time to self-medicate her mental health symptoms. There is no objective records or evidence to substantiate this claim and this claim is contradictory to the applicant’s previous claims of her marijuana use being impulsive “momentary lapse in judgement”.*

*The applicant, through counsel, stated “following the charge [the applicant’s mental health condition ‘significantly deteriorated’].” There is evidence the applicant received mental health services during her military legal proceedings. While military legal proceeding can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings. The applicant acknowledged in her application to the Board that the applicant’s in-service mental health provider opined the applicant’s mental health condition was “not suspected to be the cause of the cannabis use” and thus the applicant’s mental health condition would not mitigate the applicant’s discharge. Further, the Board acknowledges the applicant’s psychosocial stressors during her time in service; however, the applicant detailed to the Board the numerous accolades and awards during the time of these stressors and found these stressors not to have impaired her ability to perform her duties satisfactorily or above. Additionally, external stressors are generally not considered mitigating mental health conditions under the intent of liberal consideration.*

*Regarding the applicant’s concurrence with her VA diagnoses and 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?

*Based on review of the applicant’s records, the applicant’s mental health conditions were known and fully considered by the applicant’s command during the discharge process. No error was found in review of the applicant’s records; thus the applicant’s discharge is 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 / 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 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 “In Lieu of Trial by Court Martial,” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the Board president on 12 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)