

SUMMARY:

The applicant was discharged on 29 November 2018 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 / 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 14 December 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. Her misconduct included: Wrongfully use 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 applicant, through counsel, contended that the discharge was improper because it was founded upon an involuntary, violent assault that was not properly investigated by OSI. They explained that OSI engaged in manipulative interview techniques, ignored credible testimony, and did not search for or attempt to identify the assailant. They explained further that the agents attempted to coerce her into admitting the drug use was voluntary, and ignored her testimony that the ingestion was by force via digital penetration into her mouth. The applicant through counsel also contended inequity because her PTSD diagnosis as a result of the trauma outweighs the circumstances that lead to her discharge.

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 did not provide sufficient evidence regarding their contentions. Additionally, the Board noted inconsistencies in the record and the applicant's testimony regarding the circumstances of the drug use and MST. Since the Board relies on the presumption of regularity, the Board determined that the discharge received was appropriate.

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 boxes for "PTSD" and "Sexual Assault/Harassment" on the application. The applicant, through counsel, contended the applicant's discharge was improper because it was founded upon an involuntary, violent assault that was not properly investigated. The applicant, through counsel, also contended the applicant was diagnosed with PTSD subsequent to the circumstances that led to her discharge.

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

A review of the applicant's records revealed the applicant was command referred to ADAPT during her time in service due to positive drug screen. The applicant deferred substance use services pending the outcome of the investigation and did participate after her court martial proceedings concluded. The applicant's records revealed the applicant accepted a referral to mental health services subsequent to endorsing personal stressors on her PHA and reporting she was under investigation for cocaine use. The applicant's records indicate she received supportive mental health services throughout the duration of her court martial proceedings and until her discharge was finalized. There is no evidence or records the applicant received a PTSD diagnosis during at any time in service, including prior to or after her positive drug screen for cocaine. There is no evidence the applicant endorsed or exhibited any clinically significant indicators of PTSD at any time in service.

Regarding the applicant's contention of experiencing MST, a review of all available in service and post service records reveal conflicting information about the applicant's experience of MST in service. There is evidence the applicant reported to her mental health provider in October 2018 (6 months after the applicant's positive drug screen, and after her release from confinement) that a male in the dorms expressed interest in her and attempted to kiss her. There is no other information or records available and the applicant was encouraged by the mental health provider to speak with her first sergeant about this incident. There is no evidence or records this incident had a symptomatic impact on the applicant's time in service, nor does this incident mitigate misconduct that occurred prior to this incident.

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, eleven months, fifteen days' time in service.

The counsel's brief claimed the applicant's discharge is inequitable because the applicant's discharge "was founded upon an involuntary, violent assault that was not properly investigated by the Air Force Office of Special Investigations." Counsel describes the applicant's cocaine use as the result of a male a party "forcibly placed the cocaine in her mouth via digital penetration", also detailed in the AFOSI report

submitted by counsel that a male licked his finger, dipped them in cocaine, and inserted his fingers into the subject's mouth. However, counsel submitted a report of psychological assessment of the applicant in which the applicant contends she experienced military sexual assault. The applicant's report to the psychological assessor is, in essence, that she could not recall the details of what happened on the night of the drug use. The applicant described another event that occurred six months after the applicant's cocaine use in which she experienced unwanted sexual attempts from her roommate. There is no evidence of a nexus between the applicant's claimed experience of MST and the misconduct that led to her discharge, as the occurrence of claimed MST occurred after the misconduct.

There is no evidence a mental health condition caused or substantially contributed to the misconduct that led to the applicant's discharge. The board noted inconsistencies in the applicant's claims and the evidence available for review in the records. The applicant's records revealed the applicant's candor came in to question several times during the investigation and the board found a lack of candor as evidenced by the inconsistent reporting of events and symptoms.

Regarding the applicant's contention of mitigation from her experience of MST, a review of the all available in service and post service records reveal conflicting information about the applicant's experience of MST in service, including the timeline, where this occurred, and if this experience was reported and to whom. The board acknowledges that reporting of MST is not required, however, there are contradictory accounts about the experience, the impact, and the evidence that may be available for review that was not available or submitted to the board for review. There is evidence the applicant reported to her mental health provider in October 2018 (6 months after the applicant's positive drug screen, and after her release from confinement) that a male in the dorms expressed interest in her and attempted to kiss her. There is no other information or records available and the applicant was encouraged by the mental health provider to speak with her first sergeant about this incident. There is no evidence or records this incident had a symptomatic impact on the applicant's time in service, nor does this incident mitigate misconduct that occurred prior to this incident occurring.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated, the applicant's discharge is not outweighed.

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 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 presiding officer on 3 January 2024. 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)

