

SUMMARY:

The applicant was discharged on 21 August 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 their discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The applicant was represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 18 January 2024.

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 multiple Letters of Reprimand and multiple Letters of Counseling. Their misconduct included: The use of an intoxicating substance; failure of a uniform inspection; failure to notify the chain of command about illness; failure to sign off items on a log sheet; failure to notify the chain of command about the appointment; failure of a physical fitness assessment; and a failure of a dorm room inspection.

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 requests that all aspects of his discharge be upgraded, emphasizing that the command relied on unfounded claims instead of evidence. The applicant denies allegations of substance abuse, pointing out a 0.00 blood alcohol content. Although the applicant acknowledges failing certain field sobriety tests, the subsequent search of their residence that uncovered prescribed cough medicine, consistent with their doctor's prescription. The applicant asserts they were unfairly targeted, given excessive paperwork, and put in an unsupportive work environment where gossip was rampant. They state the discharge as both improper and inequitable, further urging the board to consider mitigating circumstances surrounding their mental health struggles during military service, which they believe outweigh the grounds for discharge.

The DRB observed a consistent pattern of misconduct, during which progressive discipline was applied. However, a substantial portion of the documentation was downgraded after thorough consideration of the applicant's rebuttal. This highlights a discernible level of diligence and care within the applicant's work

environment. Upon further examination of the applicant's mental health history, no evidence was found to suggest that a condition contributed to the member's misconduct.

However, it was determined after reviewing the applicant's medical record that the ADAPT program had cleared the applicant, identifying that the member had escalated the use of over-the-counter medicine to address symptoms due to the diminishing effects rather than for recreational use. With this finding the board recognized that the narrative reasoning of "Drug Abuse" was overly stringent.

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 "other mental health" on the application. The applicant, through counsel contended "there was no drug offense under the AFI or UCMJ and the discharge was inequitable. Liberal consideration should also be considered in this case."

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

There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited or endorsed any clinically significant features of a mental health condition, during his time in service. A review of the available records revealed the applicant was evaluated by a mental health provider to determine if the applicant could retain his security clearance while enrolled in the ADAPT program; the records revealed the applicant denied any mental health symptoms, denied any impacts to his judgement and was noted by the mental health provider to be qualified for the security clearance from a mental health perspective.

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 one year, five months, one day time in service. In considering the applicant's request to have his claim considered under the intent of liberal consideration, the board noted the applicant adamantly denied abusing cough syrup, the applicant's most serious misconduct. The intent of liberal consideration is to understand if an in-service mental health condition caused or substantially impacted the misconduct(s); the applicant is denying he committed the misconduct thus whether or not a mental health condition existed is immaterial. The applicant contends he experienced symptoms of anxiety and depression subsequent to the allegations of the applicant misusing cough medicines, there is no evidence or records a mental health condition caused or substantially contributed the applicant's initial cough syrup use (which is denied by the applicant). While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigates the alleged misconduct that initiated the legal proceedings. The discharge review board is not an investigative body, the intent and

application of liberal consideration is distinct from a finding of fact that the misconduct did or did not occur. Based on the available records and evidence, there is no evidence a mental health condition caused or substantially contributed to the misconducts that led to the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated by a mental health condition, the applicant's discharge is also not outweighed by a mental health condition.

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 their discharge characterization and to change the reentry code. However, it voted unanimously to **approve** to change the discharge narrative reason.

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 but inequitable. Therefore, the awarded characterization of service shall remain "General," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 24 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)