

SUMMARY:

The applicant was discharged on 28 July 2010 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 discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

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 25 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 an Article 15. His misconduct included: on or about 1 October 2009 and on or about 9 April 2010, used K2, a substance that altered perception or mental faculties; failed to advise supervisor or certifying official of this factor that could have an adverse impact on his performance, reliability, or safety while performing PRP duties.

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 requested an upgrade to his discharge and narrative reason. He details his success prior to his mistake. The applicant indicated that he smoked K2, not truly knowing what it was and explained that at the time, it wasn't illegal, so he didn't grasp the severity of his actions. The applicant highlighted that the narrative reason labels him a drug abuser, which he is not nor ever was.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. As a member of security forces in a special position of trust and on PRP (Personnel Reliability Program), the applicant knew or should have known that any intoxicating substances ingested shall be reported to the PRP monitor. This failure to advise them of a factor could have had an adverse impact on his performance, reliability, and/or safety while performing PRP duties. Therefore, 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 box for "other mental health" on the application. The applicant contended (in part) "I made a childish mistake that changed my life and ultimately caused me to be discharged from the service. I smoked K-2, not truly understanding what it was." The applicant also contended "Unfortunately, I developed mental health issues during the discharge process, which I continue to struggle with."

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

A review of the applicant in-service records revealed the applicant sought mental health services after he came under investigation for using K-2. The applicant reported symptoms of anxiety and depression related to workplace stress and his ongoing investigation. A review of the applicant's records prior to him coming under investigation revealed the applicant denied mental health symptoms. The applicant received the diagnosis of adjustment disorder with anxiety and depression in service.

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

The applicant was discharged due to drug use (K-2). The applicant's service records revealed a history of pre-service marijuana use. The applicant's records revealed the applicant chose to use drugs in a way that was incompatible with military service by willfully failing to advise his supervisor of a factor that could have an adverse impact on his performance, reliability, or safety while performing PRP duties, which may explain the applicant's drug use, but it does not mitigate the applicant's misconduct. There is evidence the applicant was referred to and received mental health services during his investigation and military legal proceedings. While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated, it 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 his / 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 to "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 26 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)

