

SUMMARY:

The applicant was discharged on 30 December 2019 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 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, and multiple Letters of Counseling. their misconduct included: Failure to go (3x); Dereliction of duty; and the wrongful use of 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.

The applicant provided no other supporting documentation beyond character letters highlighting the member's positive attitude.

The DRB determined that there was no impropriety or inequity in the discharge process. Upon reviewing the applicant's discharge records, the board noted that the member attributes the use of marijuana to persistent pain that they endured over five years. While acknowledging the member's self-medication for physical injury, the DRB emphasized that such circumstances would not fall under mental health conditions, or any other category specified in 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 highlighted that the member, was aware of the Air Force's zero-tolerance policy, could have worked with their health practitioner to adjust medication to better address their needs. the board did not have any other documentation regarding the discharge. Since the board relies on the presumption of regularity and no other evidence was provided, it concluded that the discharge received by the applicant 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 post-traumatic stress disorder (PTSD) or traumatic brain injury (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 made no other mental health contentions.

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

A review of the applicant's medical records revealed the applicant sought and received mental health treatment as a self-referral at multiple intervals during his time in service. The applicant's records revealed the applicant reported symptoms of low mood, anxiety, marital problems, irritability and problems with anger management. The applicant received the diagnoses, during his time in service, of adjustment disorder, and major depressive disorder.

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 twelve years, nine months, eleven days time in service. A review of the available records revealed the applicant's discharge was processed as a dual-action case due to the applicant's med board for back pain. Both the legal and the medical reviews of the applicant's case at the time of his discharge revealed the applicant acknowledged his marijuana use and reported he had been experiencing back pain for years. The dual action board considered the applicant's contention that his marijuana use was a mistake and the result of being in constant pain. The applicant made claims at the time of his discharge, submitted no testimony to the board, and provided no additional evidence to the board that his in service mental health condition of how his mental health condition caused or substantially contributed to his drug use. There is evidence the applicant sought and received mental health services during his time in service and endorsed symptoms of depressed mood, anxiety, irritability. The board noted that a mental health condition, in and of itself, does not mitigate misconduct. At the time of the applicant's discharge, the applicant attributed his marijuana use to being willful mistake and due to experiencing back pain. Based on the available records, there is no evidence of a nexus between the applicant's in-service mental conditions and the misconduct(s) for which he was discharged.

4. Does that condition or experience outweigh the discharge?

The applicant provided no testimony or contentions related to his claim. Based on the available records, there is no evidence the applicant's discharge was outweighed by his in-service 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.” and found no evidence of inequity or impropriety.

FINDING: The DRB voted unanimously to *deny* the applicant’s request to upgrade their 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 to “Misconduct (Drug Abuse),” and the reentry code shall remain to “4D.” The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 05 February 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)

