

SUMMARY: The applicant was discharged on 16 March 2023 in accordance with Air Force Instruction 36-3211, *Military Separations*, with a Under Other Than Honorable Conditions Discharge for In Lieu of Court Martial. 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 appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 31 January 2024. No witnesses were present to testify on the applicant's behalf.

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. The misconduct included was Wrongful use of a controlled substance.

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 is seeking an upgrade to his characterization so he can receive medical and disability benefits. Upon his return to home station after his last deployment in Afghanistan, Applicant stated he was under a great deal of stress. After a routine drug screen, he was advised there was an illicit controlled substance in his urine and was advised he would be subject to Non-Judicial Punishment or Court Martial. He states he doesn't know how the substance was present in his drug screen. Applicant asserts he completed a Chapter 6 request to be administratively discharged, without fully understanding the outcome of the Under Other than Honorable Conditions service characterization though he was represented by legal counsel and asked for separation in lieu of discharge.

The DRB found no impropriety or inequity in the discharge, noting that the member willingly accepted the discharge characterization instead of opting for a trial by court martial. Furthermore, the member's mental health condition, while acknowledged, did not contribute to or cause his drug use, therefore does not excuse or mitigate the discharge.

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 if 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 contends he is filing his initial VA claims for disability for PTSD, depression, anxiety, and Traumatic Brain Injury (TBI) all resulting from in-service events. Upon his return from Little Rock Air Force Base after his last deployment to Afghanistan, he was under a great deal of stress. He had completed a Chapter 6 to request for administrative discharge without fully knowing the outcome of his character of service under "General - Other Than Honorable". After a routine drug screening, he was advised there was an illicit controlled substance in his drug screen and was informed he would go to nonjudicial punishment or court-martial. He stated, "I am unaware how this substance was present in a UDS [Urine Drug Screen]." After waiting for six months, he decided to request the Chapter 6 and is seeking help for PTSD, anxiety, depression, and TBI.

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

There is evidence the applicant was deployed from 28 March 2021 to 22 November 2021 per his post-deployment health assessments completed on 01 December 2021 and 03 March 2022; however, he denied having any mental health concerns including anxiety, depression, PTSD, and alcohol and substance abuse problems on these assessments. He initiated medication management treatment services with his PCM on 13 July 2022 for complaints of anxiety that he said began about two years prior, which was managed, but recently worsened after failing a drug screening test. He also endorsed having sleep problems. He received regular medication management treatment services by his PCM from August 2022 to February 2023 and was reported to have panic attacks that were improved with the aid of psychotropic medications. He was given diagnoses of Anxiety Disorder, Unspecified, Generalized Anxiety Disorder (GAD), and Insomnia, Unspecified by his PCM. He was command referred to ADAPT and completed an evaluation on 07 March 2023. The applicant denied knowing he consumed cocaine but reported he had a history of drug and alcohol abuse and had utilized alcohol to cope with his depressive symptoms in the past. Despite this report, he was assessed to not meet the diagnostic criteria for Alcohol Use Disorder or Stimulant Use Disorder and was not given any other mental disorder diagnosis. There are no records or evidence that the applicant had or was diagnosed with any variations of a depressive disorder, PTSD, or TBI by a duly qualified provider during service. He repeatedly and consistently denied to his PCM and ADAPT provider that he knowingly ingested an illicit substance. He reported during his separation physical examination with his PCM he received counseling with a chaplain assistant. No records are available for review for this counseling service.

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

The applicant had consistently denied at the time of service to his PCM and ADAPT provider and in this current petition that he knowingly or was aware he used an illicit substance or cocaine. He reported he was at a party and believed his drink or cigarettes were laced with cocaine. Based on his contention and reports, it is not possible his mental health condition caused his drug use. There is evidence he had anxiety that may be related to his deployment experiences prior to his meeting with his PCM for help with his anxiety, but he reported his anxiety was managed, signifying he did not need to cope with his anxiety with a substance or that his anxiety was not impacting his overall functioning. His anxiety was exacerbated by the legal issues caused by his positive drug screening but again, his anxiety including panic attacks was managed and improved with a psychotropic medication. He reported developing anxiety, depression, PTSD, and TBI from in-service events presumably related to his deployment, and there is no evidence or records supporting he had a mental health condition or was in emotional distress impairing his judgment at the time of his positive

drug screen. There is also no evidence or records that his mental health condition had a direct impact or was a contributing factor to his discharge. Thus, his mental health condition does not excuse or mitigate his discharge.

4. Does that condition or experience outweigh the discharge? *Since his mental health condition does not excuse or mitigate his discharge, his mental health condition also does not outweigh his original discharge.*

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 seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

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 “Under Other Than Honorable Conditions” the narrative reason for separation shall remain to “In Lieu of Court Martial” and the reentry code shall remain “2B”. The Air Force DRB (AFDRB) results were approved by the presiding officer on 5 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)