

**SUMMARY:**

The applicant was discharged on 28 December 2022 in accordance with Department of the Air Force Instruction 36-3211, with a General Discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of their discharge characterization.

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 08 February 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 a Letter of Reprimand. Their misconduct included: used and possessed controlled substances as evidenced by text message conversations with multiple individuals. Specifically admitting to using drugs and alcohol to mask their feelings, getting a blunt anytime they have more than 14 days of leave, and that they smoke every day. Additionally, the member asked an individual if they knew anyone who sells controlled substances.

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 indicated that they experienced heavy discrimination and bullying based on their gender identity. They detailed the loss of their partner to suicide, as well as multiple experiences of military sexual trauma (MST), which led to their diagnosis of post-traumatic stress disorder (PTSD). They explained that they were discharged due to alleged drug use, as evidenced by text messages on their phone, however they stressed that the messages were taken out of context. The applicant concluded that there was never a positive urinalysis, even after being tested several times, and the only evidence to indicate the alleged use was the text messages.

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 argues the validity of the allegations against them; however, they do not provide any evidence to the contrary. It is on the onus of the applicant to present evidence that they did not commit the misconduct. With the lack there of contradictory evidence, the Board

relies on the presumption of regularity, and 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 boxes for "PTSD, "sexual assault/harassment", and "transgender" on the application. The applicant contended "While serving in the military, I experienced heavy discrimination and bullying based on my gender identity (transgender). I lost my partner to suicide while we were both stationed at Shaw, and I was also sexually assaulted twice, which lead to my PTSD diagnosis. As far as my reason for separation goes, my phone was seized [sp] as a result of someone who I'd seldomly socialize with being investigated for drugs. I ended up being discharged for "drug abuse" on account of text messages that were in my phone that had been taken out of context. Apparently, the 'evidence' that was found in my phone was enough to be separated despite not getting a positive urinalysis from me after being tested several times."*

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

*A review of the applicant's records revealed the applicant sought and received mental health services during their time in service including outpatient, inpatient, and intensive outpatient (IOP) services. The applicant's records revealed the applicant's on-base provider was made aware of a disclosure made by the applicant while receiving off-base service, the applicant declined services for this disclosure and declined wanting to discuss the impact of the event further. The applicant received the diagnoses, in-service, of bereavement and generalized anxiety 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 four years, four months, eight days' time in service. There is evidence the applicant sought mental health services during their time in service in conjunction with the applicant's gender transition process. The applicant's records revealed the applicant endorsed symptoms of difficulty sleeping, sadness, crying related to the death of a former partner, and symptoms of anxiety related to gender transition.*

*A review of the applicant's discharge package revealed the applicant continuously stated there was no evidence to prove the allegations of marijuana use or possession and also repeatedly stated in rebuttals to command and to the board that they tested negative for marijuana on multiple occasions. The applicant contended there was no proof of the substance use or possession that led to their discharge. Since the*

*applicant denies committing the misconduct that led to their discharge, then the applicant's contention that a mental health condition caused or substantially contributed to the misconduct that led to the applicant's discharge is null.*

4. Does that condition or experience outweigh the discharge?

*Based on review of the applicant's records, the applicant's mental health conditions were known and fully considered by the applicant's command during the discharge process. A mental health condition, in and of itself, does not mitigate nor outweigh a 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 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 Air Force DRB (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 AFDRB results were approved by the Presiding Officer on 13 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)

