

SUMMARY:

The applicant was discharged on 05 February 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Drug Abuse Through Urinalysis. 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 29 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 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 seeks an upgrade in the discharge due to impropriety in their separation. They contest that they met all seven criteria for a waivable discharge, but the commander did not evaluate any of these criteria before discharging them. The applicant further states that the drug use was a departure from their usual behavior due to sleeping issues. They used CBD products but denied ingesting any illegal substances. The applicant's counsel claims no opportunity was given for rehabilitation to support the member's Sleep issues. Ultimately, the applicant attest that this was an isolated incident in a seven-year career.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to justify an upgrade of the discharge. There is no evidence provided by the applicant or evidence found in their service record that shows they reported or sought any clinical aid for difficulty sleeping, even when given the opportunity. Additionally, the board observed that although the member tested positive for THC 8/THC 9, neither can be attributed to a CBD product alone. The DRB acknowledged that the applicant had served for a little over two years but concluded that the seriousness of the applicant's willful misconduct offset the positive aspects of their service.

LIBERAL CONSIDERATION:

Due to the applicant's claim 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, 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 the applicant “was searching for a remedy to his persistent sleeping problem and turned to using CBD. He experimented with the drug for its medicinal purposes in hopes of improving his health so the quality of his performance would not decrease due to the amount of stress imposed on him through his service.”

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 difficulty sleeping, as the applicant contended, or any other mental health condition, during his time in service.

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

A review of the applicant’s discharge order revealed the applicant was discharged with a General service characterization due to Misconduct – Drug Abuse Through Urinalysis, with two years and eight months’ time in service with the Kansas Air National Guard. The applicant, through counsel, contends he began using CBD products as a sleep aid. The applicant’s urinalysis revealed he tested positive for THC 8/THC 9, which is not the same as a stand-alone CBD product. The applicant’s contentions are incongruent with the records available for review. Based on the available records, the applicant denied all mental health conditions or difficulty with sleep during his time in service. The applicant was asked multiple times, by multiple providers specifically about his sleep to which the records reflect the applicant denied any sleep problems. There is no evidence the applicant sought or received any medications or therapeutic interventions to mitigate his contended sleep issues during his time in 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 difficulty sleeping, as the applicant contended, or any other mental health condition, during his time in service. There is no evidence a mental health condition caused or mitigated the misconduct that led to the applicant’s discharge.

4. Does that condition or experience outweigh the discharge?

There is no evidence or records to substantiate the applicant’s contention that he had a mental health condition in service. Because the applicant’s discharge is not mitigated or excused, 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 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 "Misconduct – Drug Abuse Through Urinalysis," and the reentry code shall remain to "6H." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 1 March 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)

