

SUMMARY:

The applicant was discharged on 20 December 2022 in accordance with Department of the Air Force Instruction 36-3211, Military Separations, with a General Discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of their discharge characterization.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 21 March 2024. The applicant was not represented by counsel.

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 service record included an Article 15 and multiple Letters of Reprimand. Their misconduct included Unlawfully striking an airman in the face with their fists & unlawfully pushing a sergeant; Failure to follow a regulation, Failure to attend a mandatory event; Communicating a threat; Failure to follow a regulation and providing a false statement; Unlawfully setting off the building fire alarm system and running from the scene of the incident.

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 stated that their mental health negatively impacted their military service, ultimately leading to their General discharge. They currently have been given a Veteran Affairs (VA) rating of 100% service-connected disability for unspecified bipolar and related disorders, severe alcohol use disorder, and moderate cannabis use disorder. They state that their symptoms date back to 2020 and would mitigate their misconduct.

The DRB recognized that the applicant's history reveals a consistent pattern of misconduct throughout their career. Beyond this specific incident that led to the applicant's discharge, there was a broader pattern of misconduct, such as disobeying regulations, making threats, and engaging in acts of physical violence. Generally, conduct that involves harm to others is excluded from liberal consideration. The DRB found that the seriousness of the applicant's willful misconduct offset the positive aspects of their service. During the review of the records, the DRB observed that the command provided ample assistance and time for rehabilitation. The applicant had ample opportunities provided by the chain of command after the initial offense to align with leadership expectations of proper conduct. Though the applicant did provide evidence, it did not demonstrate how a mental health condition led to their misconduct. Ultimately, the Board

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 contended "I am a disabled veteran currently at a 100% service-connected combined rating. I have a 100% rating for unspecified bipolar and related disorders with severe alcohol use disorder and moderate cannabis use disorder. My symptoms and record of this dates back to September 28, 2020. I was administratively discharged under honorable conditions on December 20, 2022, for cannabis usage, for a urine sample that was collected in the month of July 2022. My military service negatively impacted my mental capacity over time ultimately affecting my career and functionality."

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

A review of the applicant's in-service records revealed the applicant was referred to Alcohol and Drug Abuse Prevention and Treatment (ADAPT) three times and three different installations for maladaptive alcohol use. After the applicant was notified of his discharge, he requested a referral for off-base mental health services stating he would like to talk with someone off base during his transition out of the military and endorsed symptoms of nightmares, anxiety, family stressors. The applicant did not follow-up with off-base service, but was given a diagnosis of anxiety, unspecified by the on base provider for his referral.

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

A review of the applicant's DD214, Certificate of Release or Discharge from Active Duty, revealed the applicant was discharged with a general character of service due to misconduct (drug abuse) with five years, nine months, five days time in service. Based on a review of the applicant's records, the applicant appeared to lack candor during his time in service regarding the onset, frequency, and severity of his maladaptive alcohol use.

A review of the applicant's in-service records revealed the applicant had at least seven documented misconducts beginning in 2018, including five LORs and two Article 15s. The applicant's records also revealed the applicant was referred to ADAPT three times at three installations for maladaptive alcohol use resulting in misconduct. At the time of the applicant's discharge the applicant self-referred to the ADAPT clinic simultaneously to command referred for endorsing cannabis use at a family party while intoxicated. The applicant was referred to Level 2 treatment and completed partial hospitalization treatment. The applicant's records revealed the applicant continued to drink alcohol while in treatment despite informing his counselor that he was abstinent. His labs throughout treatment remained elevated and did not support

his claims of abstinence. He was recommended for program failure due to continued non-compliance with treatment at which time the applicant adamantly stated to providers he did not have an alcohol misuse issue. The applicant was discharged due to drug use. Based on a review of the applicant's medical records, there is evidence the applicant continued to use alcohol in while enrolled in treatment, reporting his use of alcohol and marijuana was related to a desired to socialize with peers who also used alcohol, and to cope with stress related to being geographically separated from his family and occupational stressors which may explain the applicant's substance use, but does not mitigate the applicant's misconduct. Further liberal consideration is generally not applied to misconduct that involves harm to others, one of the applicant's most serious misconducts involved the applicant physically assaulting another airman while intoxicated, this misconduct is excluded from the intent of liberal consideration. There is evidence the applicant exhibited and endorsed difficulty adjusting to the military lifestyle and poor coping skills which may explain the applicant's misconduct(s) but it does not mitigate the misconduct(s) that led to the applicant's discharge.

The applicant submitted his VA rating and diagnosis as evidence in support of his claim. A review of the applicant's post-service medical records reveals incongruent information between the applicant's service record and the applicant's report to post-service providers. Regarding the applicant's concurrence with his VA diagnoses, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated or excused, the applicant's discharge 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)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 18 April 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)