

SUMMARY:

The applicant was discharged on 23 Jul 2012 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 his 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 record only review. The Board was conducted on 04 April 2024. The applicant was 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 record of service included a Letter of Reprimand for marijuana use.

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 requests relief on the basis of his mental health diagnosis. The applicant asserts that his diagnosis of Post Traumatic Stress disorder (PTSD) requires the Board to apply liberal consideration during its analysis of his misconduct and consider whether his PTSD diagnosis excuses his marijuana use. The applicant also requests relief on the basis of equity and fairness, because his misconduct was nonviolent, youthful indiscretion, marijuana is legal in some states, and his post-service record is unblemished.

The applicant included a personal statement reciting his in- and post-service activities. While in the Air Force, the applicant deployed to Afghanistan and received positive reviews. He states that he witnessed wounded soldiers while volunteering at the base hospital, which he believes is the root cause of his anxiety and depression. He also alleges that he was bullied, including by being punched in the arm when he promoted, because of his race, religion, height, and political views. He states that this added to his anxiety and depression. Regarding his misconduct, the applicant explains that he decided to smoke marijuana with his father who was dying of cancer and had a prescription for the drug. Post-service, the applicant has attended college and worked in private and government positions. He also volunteers and is 100% disabled.

The applicant also included excerpts of his military records, evidence of his VA disability and mental health diagnosis, copies of guidance memoranda applicable to the Board, a character reference, diplomas, and a document on the legal status of marijuana.

LIBERAL CONSIDERATION:

Due to claims of a mental health diagnosis and/or records documenting that one or more symptoms of mental health conditions 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 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 "PTSD" on the application. The applicant contended "The board should grant the requested relief on principles of equity because the DOD mandates consideration of the influence of PTSD on service member misconduct and the changing severity of conduct like marijuana use, which outweigh [the applicant's] misconduct."

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

There is no evidence the applicant sought or received any mental health services during his time in service. There is no evidence the applicant exhibited or endorsed any clinically significant features of PTSD, 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 DD214 revealed the applicant was discharged with a general character of service due to misconduct (drug abuse) with four years, six months, eleven days in service.

Based on the available evidence and records, the applicant's mental health condition as likely as not developed post-service. There is no evidence or records 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 indicators of PTSD or any other mental health condition during his time in service. A review of the applicant's post service records that the applicant denied all symptoms of a mental health disorder on his initial compensation and pension exam immediately after his discharge. There is no evidence or records the applicant endorsed any mental health symptoms for nine years post discharge. There is evidence the applicant received a diagnosis of PTSD nearly ten years post discharge. A diagnosis, in and of itself, does not mitigate misconduct. Further, there is no evidence the applicant exhibited or endorsed any of the symptoms in service that he did at the time, nine years post discharge, when he received the diagnosis of PTSD. The applicant, through counsel, contended "A recent letter from his VA social worker describes his current symptoms of 'nightmares, negative cognitions of self and the world around him, anhedonia, persistent negative emotional state, and hypervigilance.'" Based on the available records, these symptoms developed post service. There is no evidence the applicant exhibited or endorsed these symptoms in service, nor is there any evidence these symptoms (if present) impacted the applicant's ability to perform his military duties. Lastly, the board find no evidence of a nexus between the applicant's post service symptoms and his decision to use marijuana while on leave in service. There is no evidence a mental health condition caused or mitigated the misconduct that led to the applicant's discharge.

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. At the "snapshot in time" of the applicant's service, there is no evidence the applicant had a mental health condition that caused or mitigated the misconduct(s) that led to the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Because the applicant's condition does not mitigate his discharge, it does not outweigh his discharge.

EQUITY:

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 all factors listed in paragraphs (6)(a)-(6)(l) and (7)(a)-(7)(r) of this memorandum. After considering these factors and the evidence presented by the applicant, the Board rejected the applicant's positions on issues of equity.

The Board notes that many of the applicant's equitable assertions are conclusory recitations of the Wilke factors without argument or evidence. *Compare Applicant's Brief* at 13 (paragraph C, restating five enumerated equity considerations from the Wilke memo) *with id.* at 14-16 (paragraphs 1-3). Other issues are presented in disorganized, confusing manners that shoehorn irrelevant evidence under selectively-cited factors. For example, paragraph 1 on page 14 of the applicant's brief purports to argue four Wilke factors simultaneously. In fact, it addresses three (6.g., 6.k., and 7.o), but confusingly bifurcates one factor (6.g.) with another (6.k.). Further, the brief purportedly supports one of those factors (7.o – youthful indiscretion) with irrelevant evidence (PTSD, discrimination, family stress) better suited for yet more factors explicitly detailed by Wilke, but which the brief neglects to mention.

Despite this, the Board strove to understand the precise equitable contentions hidden within the applicant's brief, and found that none of the factors supported relief.

6.b. Relief should not be reserved only for those with exceptional aptitude; rather character and rehabilitation should weigh more heavily than achievement alone.

The Board considered evidence of character and rehabilitation, including his reference, post-service treatment, education, and work. The Board concluded that the sum of his military record and this additional evidence did not outweigh his intentional marijuana use.

6.c. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

The applicant failed to persuade the Board that intentional marijuana use is merely a "relatively minor" misconduct. The military has a zero tolerance policy prohibiting marijuana use, and marijuana use remains illegal for military members.

6.g. The relative severity of some misconduct can change over time, thereby changing the relative weight of the misconduct in the case of the mitigating evidence in the case. For example, marijuana use is still

unlawful in the military, but it is now legal under state law in some states and it may be viewed, in the context of mitigating evidence, as less severe today than it was decades ago.

The applicant failed to present substantial credible evidence that he only used marijuana legally obtained by his dying father. The applicant provided no evidence corroborating his statements that the marijuana was legally purchased, used once, used in a state where marijuana was legal at the time, or used with his dying father only. While a sworn statement “may establish the existence of a fact supportive of relief,” (Wilke Memo at paragraph 6.e., emphasis added), the Board determined that the applicant’s statement, standing alone, was not sufficiently substantial or credible to mitigate his choice to break a lawful general order.

6.h. Requests for relief based in whole or in part on a mental health condition, should be considered for relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety.

The Board considered evidence supporting the applicant’s claims of a mental health condition but did not find the evidence warranted relief.

6.k. Relief is generally more appropriate for non-violent offenses than for violent offenses.

The Board considered this factor, and determined that although the applicant’s misconduct was non-violent, this factor does not require relief.

7.d. Positive or negative post-conviction conduct, including any arrests, criminal charges, or any convictions since the incident at issue;

The Board considered the applicant’s post-service employment and education, and lack of criminal activity. The Board was pleased to see that the applicant has been able to find fulfilling work. Nonetheless, his success after discharge did not persuade the Board that his discharge is inequitable because these accomplishments did not outweigh the seriousness of his intentional marijuana use when he knew it was illegal.

7.g. Acceptance of responsibility, remorse, or atonement for misconduct;

The Board appreciated the applicant’s acknowledgment that his decision was bad, and his regret. Nonetheless, the Board determined that his regret was insufficient to warrant an upgrade without other factors providing substantial support for relief.

7.o. Whether misconduct may have been youthful indiscretion;

The Board considered the applicant’s age, and determined that it does not mitigate the applicant’s misconduct because the significant majority of 23 year old servicemembers understand and comply with the Air Force’s prohibition of marijuana use. His alleged experiences with PTSD, discrimination, and father’s impending death are orthogonal to any lack of judgment inherent to youth.

p. Character references;

The applicant’s character reference generally describing leadership qualities, honesty, reliability, trustworthiness, and kindness failed to persuade the board that the applicant’s discharge for drug use is inequitable.

In conclusion, the Board was unpersuaded by the applicant’s positions on issues of equity, and determined that his discharge was equitable at the time of issuance and remains equitable now.

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 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 13 May 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)

