

**SUMMARY:**

The applicant was discharged on 6 May 2022 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Misconduct (Drug Abuse). The applicant appealed for a change to the discharge narrative reason, and a change to their separation code.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 19 April 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 record of service included an Article 15. His misconduct included: Violation of UCMJ, Article 112a, Wrongful use of a Controlled Substance, on divers occasions, on or about 11 November 2021 and on or about 29 December 2022, wrongfully used Delta-9 tetrahydrocannabinol (THC), a Schedule I 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 stated he is rated at 100% permanent and total disability by the US Department of Veterans Affairs (VA) due to military experience and has been issued a medicinal marijuana card for mental and physical health suffered in service.

The DRB determined the discharge was proper and equitable. While there is evidence the applicant reported symptoms of difficulty with focus and concentration a year prior to his choice to use marijuana, there is no evidence of a nexus between the applicant's in-service symptoms and the misconduct that led to his discharge. Similarly situated service members would receive this type of 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 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'm currently rated 100 P+T with the VA, due to my experience in the military and currently have a medicinal marijuana card from and for my mental and physical health suffered in service."*

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

*The applicant's records revealed the applicant received mental health services during his time in service on multiple occasions related to difficulty adjusting to new Permanent Change of Station (PCS) environment, and problems with focus and attention that applicant reported had existed since childhood. A review of the applicant's records revealed he did not receive any mental health diagnoses during his time in service.*

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 four years, one month, ten days time in service. The applicant's records revealed the applicant reported to the Air Force Alcohol and Drug Abuse Prevention and Treatment Program (ADAPT) providers that he willfully used THC while on leave with his family over the holiday in a social setting. There is no evidence the applicant was self-medicating. The applicant's records revealed the applicant was aware of the Air Force's zero tolerance policy for marijuana use but believed that policy to be outdated because recreational marijuana use is legal in some states. The applicant's records revealed the applicant continued to test positive for THC after his initial Drug Demand Reduction Program positive test for the remainder of his time in service. The applicant's disagreement with the Air Force policy on substance use may explain the applicant's choice to use drugs, but it does not mitigate the misconduct that led to the applicant's discharge. While there is evidence the applicant reported symptoms of difficulty with focus and concentration a year prior to his choice to use marijuana, there is no evidence of a nexus between the applicant's in-service mental health symptoms and the misconduct that led to his discharge.*

4. Does that condition or experience outweigh the discharge?

*Because the applicant's discharge is not mitigated by a mental health condition, 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 his discharge characterization, to change the discharge narrative reason, to change the separation code, 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 24 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)