

SUMMARY:

The applicant was discharged on 20 July 2009 with a Bad Conduct Discharge after being convicted of Wrongful use of Cocaine, a Scheduled II Controlled Substance during a Special Court-Martial.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 20 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 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 is requesting an upgrade in their discharge. They have highlighted that most of their years in service were conducted honorably, and they were recognized for their exceptional performance through annual evaluations and awards. They have also disclosed that they were deployed twice, and during one of their deployments, they suffered the loss of their mother. However, they have shared that it wasn't until they returned home that they struggled with coping with their grief and turned to drug use. The individual is hopeful that an upgrade in their discharge will allow them to access their VA loan and other veteran benefits.

The DRB recognizes the applicant does not contest that there was any impropriety or an equity during their discharge but is requesting for clemency. In the process of reviewing the applicant's record and the new evidence provided, the Board concluded that they did not have enough information to consider clemency. The DRB has the authority to consider post-service factors when recharacterizing a discharge. When reviewing an applicant's performance and conduct during the service period, the Board considers exceptional post-service behavior that can provide a more thorough understanding of their conduct. To support a post-service conduct upgrade, the applicant should submit documents such as a verifiable employment record, marriage and children's birth certificates (if applicable), character witness statements, community or church service records, certification of non-involvement with civil authorities, evidence of financial stability or letters of good standing from banks, credit card companies, or other financial institutions, official transcripts of higher education, and documentation of a drug-free lifestyle. However, it should be noted that completion of these documents alone does not guarantee an upgrade of an unfavorable discharge, as each case is reviewed on its merit to determine if post-service accomplishments demonstrate that in-service misconduct was an exception and not an indication of the applicant's overall character.

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 "other mental health" box on the application. The applicant contended (in part) "I was discharged when I received a failed urine test and was given a bad conduct discharge. My mother had passed away and then 30 days later I was deployed to Kuwait. When I returned back, I did not know how to deal with the grief and loss. In turn, I started using drugs. After I failed my urinalysis I did complete a rehab successfully, but also had a downward spiral."

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

A review of the applicant's medical records revealed the applicant sought and received mental health services during his time in service for symptoms of insomnia due to shift work and grief. The applicant's records also revealed the applicant was command referred to Air Force's Alcohol and Drug Abuse Prevention and Treatment (ADAPT) due to a positive urinalysis for cocaine and completed education classes and partial hospitalization substance use treatment during his time in service. The applicant received the diagnoses, in service, of cocaine dependence and adjustment disorder.

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 received a bad conduct discharge due to a court martial (other). The information available in the applicant's records revealed the applicant endorsed stressors including health issues, his mother's death a year prior, and work stressors, which brought about symptoms of difficulty sleeping and anxiety as his primary symptoms. The applicant's records revealed he appropriately sought and was receiving medication and therapeutic services for those symptoms and was reporting a reduction in symptoms at the time he tested positive for cocaine. There is no evidence of a nexus between the applicant's in-service mental health conditions and the misconduct for which he was discharged. Based on the applicant's contended symptoms of anxiety and difficulty sleeping, it is unlikely the applicant was self-medicating with cocaine.

The applicant made repeated requests for Department of Veterans Affairs (VA) benefits in his application. 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 for 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?

There is no evidence of a nexus between the applicant's in-service mental health conditions and the misconduct for which he was discharged. Because the applicant's discharge is not mitigated by a mental health condition, the applicant's discharge is also not outweighed by a mental health condition.

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 "Bad Conduct Discharge," the narrative reason for separation shall remain "Court Martial," and the reentry code shall remain "2L." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 15 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)