

SUMMARY:

The applicant was discharged on 27 May 2021 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 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 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 (two or more) occasions between on or about 29 January 2021 and on or about 5 March 2021, he was found to have wrongfully used marijuana and tested positive on a random urinalysis for tetrahydrocannabinol (THC) at 189 ng/mL - over 12 times the DoD cut-off level of 15 ng/mL. The applicant was found to have initially lied, saying it was due to "contact high" and later recanted and stated he had taken "a few hits" to "take a break from the stress" associated with his deployment. A second urine sample for re-inspection testing (approximately 13 days after initial sample), pursuant to the *Bickel* Policy Memo, returned a second positive THC result, this time at 364 ng/mL - over 24 times the DoD cut-off level.

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 identified post-traumatic stress disorder and other mental health as conditions related to his request to upgrade his character of service from General. Applicant provided US Department of Veterans Affairs (VA) benefit information reflecting a 50% rating for major depressive disorder with anxious distress. Applicant states after returning from deployment, he chose to smoke during Rest and Recuperation (R&R) due to built-up stress from work prior and during his deployment. He states that he was young at the time and afraid of talking to someone about his mental problems and thought "smoking weed" would help more than mental health could.

The DRB determined the discharge was proper and equitable. At the applicant's time of service, there is no evidence he had a mental health condition that caused or mitigated the misconduct which 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 boxes for "PTSD" and "other mental health" on the application. The applicant contended "after coming home from being deployed I chose to smoke during my period of R&R due to built up stress from work prior and during my deployment. I was young at the time and afraid of talking to someone about my mental problems and thought that smoking weed would help me more than mental health could."

2. Did that condition exist/experience occur during military 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 features of a mental health condition during his time in service. There is no evidence or records to substantiate the applicant's contention that he developed a mental health condition or exhibited any symptoms of 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 records revealed the applicant was discharged with a general character of service due to misconduct (drug abuse). The applicant's records revealed the applicant initially lied about his marijuana use and then disclosed he used marijuana while on leave in a social setting with his family. Based on additional positive drug test results, the applicant's records revealed he continued to use marijuana after his initial positive drug test. There is no evidence the applicant endorsed or exhibited any clinically significant indicators of a mental health condition during his time in service. A review of the applicant's post deployment assessments and prevention health screeners revealed the applicant denied all mental health symptoms. 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) which led to the applicant's discharge.

The applicant submitted his VA rating as evidence in support of his contention. Based on a review of the available evidence and records, the applicant's mental health condition for which he is receiving treatment at the VA as likely as not developed post-service. 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) which led to the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not excused or 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, 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)