

SUMMARY:

The applicant was discharged on 5 July 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, a vacation of suspended non-judicial punishment, and a summary court martial. The applicant's misconduct included: The applicant was found to have wrongfully used lysergic acid diethylamide (LSD) and marijuana on numerous occasions. The applicant's forfeiture of pay was suspended in the first Article 15, but subsequent drug use resulted in the vacation of that suspension. The additional drug use resulted in summary court martial and applicant's discharge.

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 (PTSD) and other mental health as conditions related to their request to upgrade the character of service and separation code. Applicant also requested an extension to their period of service for educational benefits and changing the narrative reason from "Misconduct (Drug Abuse)" to "Adjustment Disorder". Applicant states they were impacted severely by COVID-19 and victimized by authority in a scheme to eat marijuana brownies. Applicant stated they spent time with friends of who convinced the applicant to use LSD and applicant states "the actions by leadership, my peers, and the Air Forces representatives who convicted me in court are unjust". Applicant regrets actions terribly and blames their mental health for the circumstances. Applicant states they are rated by the US Department of Veterans Affairs (VA) 50% for Anxiety and Adjustment Disorder. Applicant provided a VA letter documenting an 80% service-connection evaluation. Applicant cites intention to add time to their service to allow them to obtain 36 months (applicant calculates 45 days short of 3-year mark) to receive Post-911 GI benefits to cover Basic Allowance for Housing (BAH) while earning their master's degree. Applicant states changing the narrative better represents the mental challenges in which they've had to endure without valid representation for their injuries and mental well-being and the current narrative in line

with Drug Abuse is triggering and sets them up for failure in their future.

The DRB determined the discharge was proper and equitable. The applicant's record reflects he stated the use of marijuana and LSD was due to "boredom" from being in his dorm for quarantine due to COVID-19. The applicant's record does not reflect mental health issues until after initiation of the second drug use investigation. Similarly situated service members would receive this type of discharge. The applicant's request for a medical discharge and to extend his period of service is outside the scope of the Discharge Review Board. The applicant has the option to re-apply to the DRB for a personal appearance. After exhausting that option, the applicant can then direct his request for a change to his narrative reason for separation to a medical basis and/or extended period of service to the Air Force Board for Correction of Military Records (AFBCMR).

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 on the application for "PTSD", "Other Mental Health" and "Sexual Assault/Harassment". The applicant contended he was informed that he could apply for an upgrade six months after separation and contended "I was severely impacted by COVID, victimized by his authority in a scheme to eat marijuana brownies at his home off base. The applicant also contended "I blame my mental health for the circumstances in which I have lost my opportunity for an honorable discharge." The applicant checked the box for "sexual assault/harassment" on the application but provided no other information, records, evidence, or testimony regarding this contention.

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

A review of the applicant's in-service medical records revealed the applicant denied any mental health symptoms until his second legal investigation began, at which time the applicant reported symptoms of stress and difficulty sleeping related to his legal issues, pending jail time, and possible discharge from the military. The applicant's records revealed he received the diagnosis, in service, of adjustment disorder. The applicant checked the box for "sexual assault/harassment" on the application but provided no other information, records, evidence, or testimony regarding this contention.

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 two years, ten months, ten days' time in service.

A review of the applicant's narrative statement included with his application revealed the applicant stated "I had been dealing with a medical condition in my stomach called H. Pylori which was putting me into severe pain. This virus was caused by stomach ulcers that created an entire list of problems that are still ongoing. The pain got worse every day and the medication I was taking was not helping and my mental state was thrown off by it. I felt like I was going to die and started having panic attacks while I was on the phone with

my mother who was just trying to calm me down. I stopped trying to fight the pain and went on to searching for a drug dealer who sells marijuana in the city Honolulu. A day later I found a dealer on the street in Honolulu and asked for a small amount of marijuana which he put into a Ziploc bag.” The applicant also stated, “I knew that this was illegal and I knew the consequences could be harmful to me, even more harmful to others if I were to continue.” The applicant provided no information or testimony regarding his use of LSD or his other contention that he consumed marijuana brownies while seeking companionship during the COVID lockdowns. The applicant’s records revealed a pattern of maladaptive substance use that began prior to service, prior to COVID-19, and prior to his medical problems and persisted after. The applicant’s contentions are contradictory to the evidence available for review in the applicant’s in-service records, specifically regarding the circumstances of his drug use, pre-service history of drug use, and post service report of mental health symptoms that occurred in service. The records available for review revealed the applicant denied any mental health symptoms prior to coming under investigation, at which time he reported stress related to the ongoing investigation. There is no evidence a mental health condition caused or substantially contributed to applicant’s choice to use drugs during his time in service. There is evidence the applicant was referred to and received mental health services during his military legal proceedings. While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings.

The applicant submitted his VA rating as evidence in support of his contentions. Regarding the applicant’s concurrence with his VA ratings, 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?

The applicant’s request for a medical discharge is outside the scope of the Discharge Review Board.

Based on a review of the available records, no impropriety was found in the applicant’s discharge. Because the applicant’s discharge was not mitigated nor excused 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)