

**SUMMARY:**

The applicant was discharged on 13 November 2009 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 her discharge characterization and a change to the discharge narrative reason.

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 review Bad Conduct Discharges adjudged by a Special Court-Martial, it may change the punitive discharge to an administrative discharge for the purposes of clemency if warranted. The Board considered whether there is good cause to upgrade a service characterization or change the reason for a discharge to an administrative separation, rather than a punitive separation.

The applicant's record of service included Special Court Martial Order. Her misconduct included: Between on or about 15 Jun 09 and 30 June 09, wrongfully used marijuana; Between on or about 1 Jul 09 and 17 Jul 09, wrongfully used marijuana; Knowingly and falsely reported that she had not used or experimented with marijuana prior to enlisting.

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 requested an upgrade as she's already been punished for her actions. She admitted to the drug abuse, however indicated that it wasn't until she deployed, and the drug use was to cope with her experiences while overseas. The applicant stated that her time in the military affected her and still does to this day. She concluded that the discharge is preventing her from receiving full VA benefits.

The DRB reviewed the applicant's entire service record and found insufficient evidence to grant the applicant's request. The applicant did not provide sufficient evidence that she was using to cope with experiences while deployed. Additionally, there were no diagnoses, symptoms, nor records of treatment during service, that would support her contentions. The Board understood the applicant's present service characterization renders her ineligible for Department of Veterans Affairs education benefits. However, this is not a matter of inequity or impropriety which would warrant an upgrade.

**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 contended “Yes, I did fail a drug test for having marijuana in my system but I[sp] was after I had returned from being deployed to Iraq. I was trying to cope with my time over there and returning stateside was an adjustment to me.”*

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 her time in service. There is no evidence the applicant exhibited or endorsed any clinically significant features of a mental health condition during her 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 two years, seven months, seventeen days’ time in service.*

*The applicant contended she began using marijuana upon her return from deployment. A review of the applicant’s discharge package revealed the applicant tested positive for marijuana on multiple occasions. The applicant’s discharge package also revealed the applicant’s secondary basis for discharge was fraudulent entry in which the applicant knowingly made false representations that she had not used or experimented with marijuana prior to enlisting in the Air Force, when in fact she had used or experimented with marijuana. It is unlikely a mental health condition would mitigate or excuse the applicant’s falsification of records.*

*There is no evidence the applicant sought or received any mental health treatment during her time in service. There is no evidence the applicant exhibited or endorsed any clinically significant features of a mental health condition during her time in service. It is unlikely the applicant was using marijuana to cope with the return from her overseas deployment as the timeline is incongruent. The applicant’s performance records (EPR) indicated the applicant’s performance was above average with no duty impacts noted by her leadership. The applicant’s service records reveal a history of pre-service marijuana use, there is no evidence or records the applicant’s substance use was due to the applicant self-medicating an underlying mental health condition.*

*The applicant submitted her VA rating as evidence in support of her claim. 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 condition does not mitigate the discharge, it does not outweigh the discharge.*

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 her 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 25 March 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)

