

**SUMMARY:** The Applicant was discharged on 28 June 2018 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a Under Other Than Honorable Conditions 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 record only review. The Board was conducted on 02 May 2024. The Applicant was 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, multiple Letters of Counseling. Their misconduct included: Wrongful Use of Cocaine, A Schedule II Controlled Substance; and Failure to go (5 times).

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 did not dispute any impropriety or inequity of his discharge but sought consideration of his mental health conditions as mitigating factors for his drug-related misconduct. He argued that his sleep disturbances, which should have been considered under the Kurta memo as mental health, may have impaired his behavior. The Applicant requested the board to consider clemency, highlighting his efforts to improve himself and contribute to his community through his work in food services and his invention aimed at assisting Alzheimer's patients and deterring violent crimes against women and children.

The DRB determined that, based on the available records, there was no evidence to support an honorable upgrade. The Applicant failed to establish a clear connection between their mental health condition and how it would mitigate their misconduct. Regarding the Applicant's request to consider clemency, the DRB determined that in reviewing the Applicant's record and the evidence provided, the Board did not have enough information to grant clemency.

The DRB has the authority to consider several factors, including but not limited to candor, atonement, and post-service conduct when recharacterizing a discharge. When reviewing an applicant's performance and conduct during the service period, the Board will consider 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. Completing 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.

The DRB determined that the severity of the Applicant's deliberate misconduct outweighed any honorable contributions from their service. However, the Board noted that Under Other Than Honorable Conditions is described as a significant departure from expected conduct, with examples including the use of force or violence resulting in serious bodily injury or death and endangering the security of the US or the health and safety of others. The Board found that single-time cocaine use does not reach the severity of those acts. Thus, a General (Under Honorable Conditions) characterization is appropriate.

### **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's attorney contends he suffered from sleep problems that may have lowered his ability to behave as he normally would and affected his judgement.*
2. Did that condition exist/experience occur during military service? *According to the record, the Applicant presented to primary care with the complaint of sleep difficulties days after the reported cocaine use. After the negative sleep study, there was no evidence of any further complaint regarding sleep.*
3. Does that condition or experience actually excuse or mitigate the discharge? *No, there is no evidence that the Applicant had any mental health condition that would excuse or mitigate the discharge. Given there is no identifiable mental health condition and no in-service evidence that sleep disturbance was a factor that led to cocaine use, the experience or condition did not excuse the discharge; however, it is possible that he attempted to treat his daytime sleepiness with cocaine (a stimulant). Thus, it is possible that his experience may mitigate the discharge. At the sleep study evaluation, the Applicant reportedly stated he had experienced sleep disturbance for many years despite having adequate sleep. His sleep study was normal. Therefore, there was no evidence of an organic or psychological basis for his sleep complaint but likely a behavioral basis.*
4. Does that condition or experience outweigh the discharge? *No.*

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 2 to 1 to *approve* the Applicant’s request to upgrade their discharge characterization. However, The DRB also voted 2 to 1 to *deny* a change to the discharge narrative reason and voted unanimously to *deny* a change to 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 inequitable. Therefore, the awarded characterization of service shall Change to “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 19 May 2019. 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)