

SUMMARY:

The applicant was discharged on 31 March 2010 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 his 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 18 April 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 for using hashish while deployed.

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 asserted that his mental health conditions, including depression, suicidal ideation, and post-traumatic stress disorder (PTSD), mitigated his misconduct while deployed which led to his discharge. The applicant explained that he had a difficult childhood due to abuse. He argued that his PTSD symptoms were exacerbated during his deployment and caused him to use and share hashish that had been given to him by a local. He also argued that his PTSD clouded his judgment and prevented him from realizing that the hashish was a drug, rather than incense, despite using marijuana prior to entering the military. The applicant had a positive drug test for marijuana after the incident.

The applicant attached copies of his performance records, character references, Air Force records, medical records, and guidance applicable to the DRB.

The DRB determined that the applicant's mental health conditions mitigated his misconduct and rendered his discharge inequitable.

LIBERAL CONSIDERATION:

Due to evidence of a mental health diagnosis and/or records documenting that one or more symptoms of mental health conditions 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 through his counsel contends that PTSD, depression and anxiety, and other experiences potentially contributed to his misconduct for which he was discharged.

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

The applicant did not receive a diagnosis of PTSD according to his service treatment records. He experienced panic attacks during deployment secondary to personal problems. His weapon was taken away in August 2009 as a safety precaution. After the positive test result for marijuana (Sep 09), he presented to the mental health clinic and received the diagnosis of narcissistic personality disorder. He returned to the clinic and the diagnosis of depression was added. Shortly thereafter, the applicant walked into the clinic and reported suicidal ideation and was hospitalized and treated for depression (MDD) and narcissistic personality disorder.

3. Does that condition or experience actually excuse or mitigate the discharge?

The applicant's personal statement noted he suffered from childhood abuse and depression, and in 2006 he attempted suicide and was hospitalized for 4 days. He enlisted not long after his discharge from the hospital. He was prescribed anti-anxiety medication in June 2008 for anxiety and the prescription was last filled in May 2009. He started having anxiety attacks after he arrived in Afghanistan in June 2009, and had severe panic attacks. He was diagnosed with depression in theater and his antidepressant-anxiety medication was renewed (Effexor). In August his weapon was taken away to prevent self-harm. The command was notified in Sep 2008 to return the weapon. The applicant stated he was miserable from pain, depression and panic attacks when he accepted the hashish from a truck driver. He was unaware that it was hashish. When he lit it, "not thinking much of it", it turned out to be hashish and he immediately regretted his lapse in judgment. The applicant's lapse in judgment could be attributed to his depression and anxiety, physical pain and life stressors. Thus, his mental health condition of depression and anxiety may excuse and mitigate his discharge.

4. Does that condition or experience outweigh the discharge?

Since his mental health condition was found to have caused, excused, and mitigated his discharge, his condition would also outweigh his discharge.

EQUITY ANALYSIS:

The applicant did not submit an issue of propriety, and the Board did not rely upon any such issue in its decision. DODI 1332.28 E3.5.4.

DODI 1332.28 states that the discharge is presumed equitable. E4.3. The Board must deem a discharge inequitable if there are new policies applicable granting further benefits (E4.3.1), the discharge was inconsistent with standards of discipline (E4.3.2.), or the discharge can now be seen as inequitable even though it was equitable at issuance based on specified factors (E4.3.3).

Regarding E4.3.3., the Board analyzed the applicant's quality of service as evidenced by factors including his service history and records of nonjudicial punishment. First, the Board considered evidence in the applicant's performance record. This evidence indicated that the applicant was an average performer, as recorded in his enlisted performance reports, and contrary to his counsel's assertion that he was "senior officer material." Second, the Board considered the applicant's misconduct and subsequent proceedings, including that the applicant initially stated that his positive drug test was the result of a specified medication. This claim was revealed to be a lie after subsequent urinalysis testing revealed that the urinalysis results were consistent with illicit use and not explained by any medication. The Board also reviewed evidence that the applicant admitted to dormmates that he knew the substance was illegal and destroyed evidence of his use when he suspected it was illegal. Finally, the Board assessed record evidence that the applicant used the hashish twice, contrary to his claim that he used the hashish once.

Nonetheless, the Board determined that, given the benefit of liberal consideration as described above, the applicant provided sufficient credible evidence to show that these negative factors are mitigated by the applicant's personal mental health problems. E4.3.3.2.2. As a result, the applicant's discharge is inequitable, and relief is warranted.

FINDING: The DRB voted unanimously to *approve* the applicant's request to upgrade his discharge characterization and to change the discharge narrative reason. The DRB voted unanimous 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 "Honorable," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 13 May 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://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)