

SUMMARY:

The applicant was discharged on 28 April 2017 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 separation 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 reenry 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 wrongful use of marijuana.

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 argued that his discharge is inequitable because he was suffering from anxiety and depression when he used marijuana, and only used marijuana once to self-medicate.

The applicant included character references drafted during his discharge processing. The references generally attested to the applicant's good nature and hard work while in the Air Force. The applicant also included a license for medical marijuana dated after his discharge.

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 contends that due to his depression he tried marijuana in search of relief from his symptoms. It was a spur of the moment decision that he felt was an irrational bad decision clouded by his depression. Regarding the marijuana use, he stated that he was having drinks with a friend who offered him marijuana. He wanted to decline but didn't because he had not been in a "good mindset lately." At the time he had a history of consuming a 24-pack of beer per week, and whiskey once a week to help him have fun and to elevate his mood. Alcohol provided relief from feeling lonely and depressed.

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

The applicant used marijuana and drank alcohol to treat his mood of feeling sad and lonely. There was no documented use of marijuana prior to service. He admitted to heavy use of alcohol prior to service. Although he presented to Alcohol and Drug Abuse Prevention and Treatment (ADAPT) after the marijuana incident, he received treatment for his alcohol use. At that time, he reported drinking alcohol to help him sleep, and noted that he had not used any illegal drugs in the military before, and had no desire to use marijuana again. He reportedly indicated that he was committed to seeking help for his depression.

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

The applicant explained in his application that his anxiety and depression caused him to use marijuana to self-medicate. In the Response to the proposed Discharge, the applicant stated he struggled with loneliness and became depressed. He sought comfort from others in the wrong places, which led him to make a bad decision. There was evidence of depression and anxiety. He reported poor sleep, low motivation, and low mood, all of which could be attributed to his depression. Chronic use of alcohol could also produce these symptoms. His use of marijuana and alcohol as means to improve depressive symptoms was a product of his poor judgment since these substances may only provide temporary relief. However, his poor judgment likely stemmed from his depressive symptoms. Thus, his mental health condition of depression 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).

The Board determined that quality of service factors weighed in favor of granting relief here, even if the discharge was equitable at the time of issuance. E4.3.3. The Board noted the applicant's service history, which included his "5" EPRs followed by a "4" EPR immediately preceding his referral report for the drug

use, and his three deployments. The Board also considered the applicant's decorations, record of promotions (including his early promotion), and length of service (almost 5 years). Further, the Board considered the mitigating evidence of the applicant's mental health condition. The Board concluded that these positive factors outweighed the applicant's misconduct.

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 noted the following factors which applied to the applicant's case:

6.a. Military custom honors sacrifices and favors second chances where an individual has paid for misdeeds. *The applicant forfeited pay and was reduced in rank, but denied a requested chance for rehabilitation.*

6.c. An honorable discharge characterization does not require flawless military service. *The applicant had no other misconduct besides the drug abuse.*

6.g. The relative severity of some misconduct can change over time. *While marijuana use is illegal for military members, the Board recognized that the severity of the applicant's single experimental use is lower than other cases of drug use.*

6.j. Similarly situated Service members sometimes receive disparate punishments, and the Board should consider uniformity and unfair disparities in punishments as a basis for relief. *While the Board determined that the discharge was otherwise equitable and proper at the time of issuance, the Board recognized that the applicant was in the maintenance career field, which often has stricter enforcement than other career fields.*

6.k. Relief is generally more appropriate for nonviolent offenses than violent offenses. *The Board did not identify any violent conduct in the applicant's records.*

In conclusion, the Board considered that a General (Under Honorable Conditions) characterization is appropriate when "when the positive aspects of the enlisted Service member's conduct or performance of duty outweigh negative aspects of the enlisted Service member's conduct or performance of duty as documented in their service record." DODI 1332.14, *Enlisted Administrative Separations*, at page 30 (paragraph 3(b)(2)(b)). In contrast, an Honorable characterization is appropriate "when the quality of the enlisted Service member's service generally has met the standards of acceptable conduct and performance of duty for military personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate." *Id.*

After applying liberal consideration and reviewing the applicant's service records, the Board concluded that the applicant's service was "otherwise so meritorious" that an Honorable discharge characterization is appropriate.

FINDING: The DRB voted unanimously to *approve* the applicant's request to upgrade the applicant's discharge characterization and to change the discharge narrative reason. The applicant did not request an upgrade to the reentry code, and the DRB voted unanimously to *deny* this change.

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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)