

SUMMARY:

The applicant was discharged on 25 Oct 2022 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.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 18 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 for marijuana use.

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 due to a traumatic brain injury (TBI), he made poor decisions. He claimed he tried to self-medicate with cannabis to ease his pain and suffering because he did not understand what was going on with his health at the time.

The applicant included a copy of his DD-214.

The Board determined to deny the applicant's requests because he failed to present substantial credible evidence that his discharge was inequitable. DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E3.2.12.6.

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 his misconduct was due to dealing with a lot of family and work issues that resulted in his feelings of depression and severe anxiety. He spoke to the Chaplain and family and friends. In his application, the applicant stated, "Due to TBI I was making poor decisions with my health and was trying to self-medicate with cannabis to ease my pain and suffering as at the time didn't understand what was going on with my health."

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

The applicant was diagnosed with a concussion on 9 Jan 22 after he fell on ice and hit his head on a Humvee. He was seen in the emergency department (ED) two days after the fall and reported loss of consciousness for less than a minute, intermittent dizziness, blurred vision, light sensitivity and headache since the fall. He was discharged from the ED with diagnosis of concussion and treated with Tylenol and ibuprofen and was told to follow-up with primary care. There is no evidence that the applicant continued to report symptoms related to his head injury or had any follow-up care for concussion. Although he had an injury that could have caused a TBI, there was no evidence that he was formally assessed or diagnosed with a TBI, and no evidence that he suffered from any cognitive deficits. There was no documented evidence that he sought help from the Chaplain or any mental health professional for his feelings of depression and anxiety. During the separation exam (26 Aug22), the applicant endorsed depressive symptoms and stated he had experienced depression, anxiety and insomnia over the past year. The applicant implicated his head injury as the cause of poor judgment that led to his misconduct. He did not implicate a mental health condition or the drug use as an attempt to treat his depression, anxiety and insomnia.

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

The applicant deferred an evaluation for substance abuse and hence no treatment was provided, and no mental health diagnosis rendered. He did respond to the Article 15 for misconduct, stating he had been under stress and had feelings of depression and anxiety. There was no evidence that the applicant received a mental health diagnosis, nor was there evidence that he sought an evaluation for mental health concerns. Without documentation of his feelings of depression and anxiety prior to the incident, there is no evidence to suggest that a mental health condition excuse or mitigate the misconduct. It is acknowledged that substance abuse is commonly co-morbid condition of mental health conditions; however, the applicant in his application, contended that he had a TBI that led to his actions. There was no diagnosis of a TBI during service. As noted above, the fall sustained by the applicant could lead to the development of a TBI; however, he was never assessed for or diagnosed with a TBI and there is no evidence that he would have met criteria for a TBI. During the primary care new patient visit on 2 August 2023, at the local VA, the applicant mentioned a history of a fall from a military vehicle without implicating a head injury.

4. Does that condition or experience outweigh the discharge?

Since there is no mental health condition or experience that excuse or mitigate the discharge, there is no condition or experience to outweigh the 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.

The Board examined the applicant's arguments and claims under the equity factors found in DODI 1332.28, E4.3. Based on these factors, the Board rejected the applicant's positions on issues of equity. DODI 1332.28 E3.5.6.1.

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).

After reviewing the applicant's records and contentions, the Board determined that the equitable factors in DODI 1332.28 did not favor relief. The applicant's discharge following drug use was consistent with Air Force standards of discipline. The applicant had no quality of service factors under E4.3.3.1. due to his short service.

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.

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.

The Board concluded that the applicant did not generally meet the standards of acceptable conduct by his drug use. To be eligible for an Honorable characterization, the service must be so meritorious that a "General" characterization would be clearly inappropriate, and the applicant failed to present "substantial credible evidence" to the contrary. DODI 1332.28 E3.2.12.6.

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 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)