

SUMMARY: The Applicant was discharged on 11 December 2019 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 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 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 and a Letter of Counseling. Their misconduct included: Wrongful Use of Marijuana and Failure to Obey a Lawful Order.

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 contests their discharge, they stated their traumatic experiences ultimately led to their involuntary separation from the service. At the time, they explained they were unaware of the available resources. They requested the Board to consider an upgrade so they can seek medical support from Veterans Affairs and become eligible for educational benefits.

The DRB conducted a thorough review and found no evidence provided by the Applicant or within the available records to support the request for an upgrade in characterization or narrative reason. The case involved an involuntary discharge due to one wrongful use of marijuana. The DRB acknowledges that the Applicant accepted full responsibility for their misconduct, as stated in their rebuttal to the discharge notification; however, the Applicant failed to provide proof of their traumatic experience or how it would have directly contributed to their misconduct. While the Board found evidence that the Applicant had utilized mental health services numerous times, there was no evidence indicating impropriety or inequity that would warrant an upgrade in characterization or a change in the narrative. Nevertheless, the Board determined it appropriate to upgrade the Applicant's Reentry code to allow them to be considered for accession. Whether or not they are successful in enlisting is subject to the needs of the service.

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 "due to the circumstances of my discharge it has caused me to have severe anxiety and depression. When I was in the service I was going through a lot of traumatic experiences, and this is ultimately what caused my discharge from service. I did not know of the resources I could have used while I was in service."

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

A review of the Applicant's records revealed the Applicant sought and received mental health services during his time in service. The Applicant reported stressors of difficulty sleeping, and relational problems with ex-fiancée. The Applicant's records revealed the Applicant was referred to the ADAPT program on two occasions due to maladaptive substance use. The Applicant received the diagnosis, in service, of adjustment disorder.

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, three months, thirteen days' time in service. The Applicant contended he was unaware of the resources that were available to his during his time in service. A review of the Applicant's records revealed he utilized mental health services on multiple occasions during his time in service and was referred to ADAPT services for maladaptive substance use on two occasions during his time in service. The Applicant's records also revealed he denied any mental health symptoms on his annual preventative health assessments and declined referrals but was provided information and contact information annually for physical, spiritual, financial, and emotional health resources. The Applicant's records revealed a pattern of maladaptive substance use in social settings including drive his car while intoxicated and eating marijuana cookies while intoxicated. The Applicant's records revealed the Applicant reported to providers that his substance use occurred "at parties" and in the context of social gatherings with friends for holidays and celebrations. There is no evidence or records the Applicant was self-medicating an underlying mental health condition. There is no evidence a mental health condition caused or substantially contributed to the misconduct that led to the Applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Because the Applicant's discharge is not mitigated or excused, the Applicant's discharge is also not outweighed.

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 deny the Applicant's request to upgrade their discharge characterization, change the discharge narrative reason, and reentry code.

MINORITY VIEW: The minority explains why they voted to grant an honorable discharge characterization and a change to the narrative reason, in addition to upgrading the reentry code.

The Wilkie Memo lists twelve factors that the Board "shall consider" (paragraphs 6.a. through 6.l.), and eighteen more that the Board "should also consider" (paragraphs 7.a. through 7.r.). In the minority's view, these factors weigh in favor of relief.

6.a. It is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds. *The Applicant had excellent service history with only trivial misconduct outside of a single, accidental marijuana ingestion which led to his discharge. He was punished for the ingestion by being demoted from Senior Airman to Airman. Given that he was recommended for discharge just two weeks later, he was never given a second chance to rehabilitate.*

7.e. Severity of misconduct: *The Applicant did not distribute drugs, and there is no evidence of other Airmen attending the party.*

E4.3.3.1.12. Records of nonjudicial punishment: *The Applicant received an Article 15 for the drug ingestion.*

In the minority's view, after conducting an examination of the Applicant's files, the balance is in favor of relief. The minority would grant all relief requested.

The majority did not accept the Applicant's story about an accidental ingestion.

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 Change to "3K." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 1 July 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)