

SUMMARY:

The Applicant was discharged on 03 August 2011 per Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Misconduct (Serious Offense). The Applicant appealed for an upgrade of his discharge characterization.

The Applicant requested that the Board be completed based on a records-only review. The Board convened on 9 May 2024. Counsel did not represent the Applicant.

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, including evidence submitted by the Applicant. The Board thoroughly reviewed 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 a Special Court-Martial conviction for distributing hashish, possessing a syringe for steroids, making false official statements, using hashish, and using a Schedule III controlled substance.

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 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 he experienced the deaths of comrades from IED explosions and was fired upon while driving convoys with the Army across 8,000 miles in Iraq. This combat experience and concomitant post-traumatic stress disorder (PTSD), coupled with marriage difficulties and the deaths of his parents, resulted in him using illegal drugs while deployed. The Applicant included a copy of his parents' obituaries. The Applicant noted that he was selected for the Return to Duty program by the Secretary of the Air Force, which allowed him to rejoin service after incarceration due to his illegal drug use.

The Board denied 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 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), 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 checked the boxes for "PTSD" and "other mental health" on the application. The Applicant contended, "I made a bad judgment call and have regretted that decision every day since. I have no viable excuse except that I was dealing with PTSD symptoms from my Iraq deployment and the death of my mother in 2008 and my biological father in 2010. I was looking for a way to stop the pain."

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

Based on a review of the Applicant's records, the Applicant sought and received mental health services during his time in service. The Applicant's records revealed he reported symptoms of anxiety, hypervigilance, and avoidance behaviors during and after his return from his second deployment. The Applicant's records indicated he was command referred to the Return to Duty mental health rehabilitation program after his special court-martial conviction but voluntarily self-eliminated. The Applicant received the diagnoses, in service, of adjustment disorder with depressed mood, panic disorder, and PTSD.

3. Does that condition or experience 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 (serious offense) with five years, six months three days time in service. A review of the Applicant's records revealed that the Applicant endorsed symptoms of anxiety and difficulty sleeping upon return from his first deployment. However, those symptoms were noted to be resolved, and the Applicant was cleared for deployment and did not return to mental health beyond the first session. The Applicant returned to mental health upon return from his second deployment and reported symptoms of stress due to legal, financial, and marital problems. The Applicant was cleared for deployment and noted to providers that although he was experiencing multiple life events, they were not impacting his ability to perform his duties. The Applicant's records indicated the Applicant sought mental health services in theater on his second deployment related to anxiety due to pending legal issues and difficulty sleeping. The Applicant also endorsed avoidance and hypervigilance, which he believed led to his polysubstance use. The Applicant was command referred to the Return to Duty mental health rehabilitation program but self-eliminated after one day and acknowledged and accepted this would lead to administrative separation. There is evidence that the Applicant's in-service mental health condition may have contributed to the Applicant's maladaptive substance use in service and thus may mitigate some of the Applicant's misconduct, but not all.

The Applicant's misconduct(s) of distribution of hashish while in a deployed location and making a false official statement are excluded from the intent of liberal consideration, and it is unlikely that his premeditated and willful distribution of prohibited substances or his making a false official statement was caused by a mental health condition. Based on the available records, these misconducts that led to the Applicant's discharge were willful, premeditated, and involved the distribution of drugs: all aggravators that are not generally mitigated by a mental health condition and excluded from the intent of liberal consideration.

4. Does that condition or experience outweigh the discharge?

Based on the available records, there is evidence that the Applicant's in-service mental health condition may have caused or contributed to his drug use in service. However, there is no evidence of a mitigating nexus between the Applicant's mental health condition and willful and premeditated misconduct of distributing drugs in service. There is also no evidence of a mitigating nexus between the Applicant's mental health condition and willful and premeditated misconduct of making a false official statement related to his drug use and distribution. Considering the totality of the available evidence and mitigation, the Applicant's discharge is not outweighed.

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 evidence 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 Board considered the following:

E4.3.1. Existence of new policies:

The Board is unaware of any new policies that would have granted the Applicant further benefits, and the Applicant did not identify any.

E4.3.2. Consistency with Air Force disciplinary standards:

The Air Force discharged the Applicant following his use and distribution of illegal drugs. The Board determined that this is consistent with Air Force standards.

E4.3.3. Factors revealing inequity even if the discharge was equitable at issuance:

The Board also considered factors that would tend to relief even if the Applicant's discharge was equitable at the time of issuance. Among other factors, the Board considered the following:

E4.3.3.1: Quality of Service:

E4.3.3.1.1. Service history: The Applicant enlisted during OEF/OIF and volunteered for combat deployments. He had above-average EPRs.

E4.3.3.1.2. Awards and decorations: The Applicant received an Army Commendation Medal and an Air Force Combat Action Medal.

E.4.3.3.1.4. Combat service: The Applicant had significant combat service running many convoys through Iraq. He experienced IEDs and small arms fire.

E4.3.3.1.11. Conviction by court-martial: The Applicant pled guilty in a court-martial proceeding and was sentenced to confinement.

E4.3.3.2: Capability of service:

E4.3.3.2.2.: Family and personal problems: The Applicant documented the death of his mother and biological father during the period of his deployment and tumultuous marriage.

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 at least the following factors to be relevant to the Applicant's case:

6a. Military custom honors sacrifices and favors second chances: The Board balanced the Applicant's significant sacrifices during his service, including volunteering for deployments, against the need for second chances and rehabilitation. The Board determined that this factor did not favor relief because the Applicant was afforded a second chance to return to service after extreme misconduct while deployed but failed to take it.

7.a. Applicant's candor: The Applicant lied regarding drug use at the time of the investigation. Further, the Board noted that the Applicant did not address his schedule III drug use in his application.

7.c. Aggravating and mitigating facts: The fact that the Applicant's drug use and distribution occurred during a combat deployment is an aggravating factor weighing against relief.

7.g. Remorse: The Board noted the Applicant's deep regret for his actions, but this regret did not outweigh the misconduct.

7.i. Evidence of rehabilitation: The Applicant did not provide evidence of rehabilitation

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

FINDING: The DRB unanimously denied the Applicant's request to upgrade his discharge characterization. The Applicant did not request to change the discharge narrative reason or the reentry code, and the DRB voted unanimously to *deny* such relief.

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). Per 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 thoroughly reviewing the available evidence, including the Applicant's issues, a summary of service, service/medical record entries, and the 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 (Serious Offense)," and the reentry code shall remain "2B." The Presiding Officer approved the Air Force DRB (AFDRB) results on 14 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)