

SUMMARY: The Applicant was discharged on 12 July 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a Character of Discharge of Under Honorable Conditions (General), a Narrative Reason for Misconduct (Drug Abuse) and a Reentry Code of 2B. The Applicant appealed for an upgrade of their discharge Narrative Reason for Separation.

The Applicant requested the Board conduct an initial record review of their discharge. The Board convened on 09 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 for using Delta-8 THC and marijuana, a Letter of Reprimand for disrespecting a non-commissioned officer, and multiple Letters of Counseling for failing to be on standby and failing to report to work on time.

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 requested an upgrade to his narrative reason only because he felt that it is unjust for him to be labeled a drug abuser for a one-time incident. The Applicant included a character reference from his mother, who explained that the Applicant's grandfather died around the time of the Applicant's drug use, and that the Applicant was experiencing back pain and marriage difficulties as well. The Applicant included evidence of Department of Veteran's Affairs (VA) disability for adjustment disorder.

The Board determined to deny the Applicant's request because he failed to present substantial credible evidence that his reentry code is 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), 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 box for "other mental health" on the application. The Applicant contended "I feel it was unjust to label me as a drug abuser for one short period in my service after 43-months of service prior without incident. This statement is making it very difficult for me to get a decent job and be able to progress for my future."*

2. Did that condition exist/experience occur during military service? *A review of the Applicant's records revealed the Applicant was evacuated from a deployed location after endorsing suicidal ideation due to relational problems and received the diagnosis of adjustment disorder. Upon returning stateside, the Applicant denied mental health concerns and did not continue with mental health services beyond the requirement. The Applicant's records revealed the Applicant denied mental health symptoms for the remainder of his time in service. The Applicant's records also revealed the Applicant was command referred to ADAPT due to a positive urinalysis; the Applicant declined substance abuse services and did not attend.*

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 three years, six months, seventeen days time in service. The Applicant made no contentions that a mental health condition caused or substantially contributed to his choice to use drugs during his time in service. The Applicant referenced back pain in his response to discharge notification, which is not a mental health condition. There is no evidence the Applicant was unaware of the Air Force's zero tolerance policy on drug use. There is evidence the Applicant exhibited and endorsed difficulty adjusting to the military lifestyle and poor coping skills which may explain the Applicant's misconduct but it does not constitute a mental health condition and does not mitigate the misconduct(s) that led to the Applicant's discharge. The Applicant's records revealed the Applicant denied mental health symptoms and did not want to engage in mental health services beyond what was required when he was evacuated from a deployed location. The Applicant's records also revealed he declined substance abuse services after testing positive for Delta-8. The Applicant submitted his VA rating as evidence in support of his claim. The Applicant also contended "I have been in contact with my local VA to advance positively for my mental as well as physical health and have been slowly progressing to better myself and my future." There is no evidence or records the Applicant has received any post service mental health care.*

Regarding the Applicant's concurrence with his VA rating, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the "snapshot in time" of the Applicant's service, there is no evidence a mental health condition caused or substantially contributed to the misconduct(drug abuse) which led to the Applicant's discharge.

4. Does that condition or experience outweigh the discharge? *Because the Applicant's discharge is not mitigated by a mental health condition, the Applicant's discharge is also 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, nor did the Applicant identify any.

E4.3.2. Consistency with Air Force disciplinary standards: The Applicant was discharged after a positive urinalysis result for marijuana, multiple LOCs, and an LOR. Based on this misconduct, the Board determined that the discharge was consistent with Air Force disciplinary standards.

E4.3.3. Factors revealing inequity even if 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 had average performance evaluations.

E4.3.3.1.2. Letters of commendation or reprimand: The Applicant's service record included letters of commendation for help during a heritage event and during a deployment, but also had LOCs and an LOR for being late, failing to be on call, and disrespecting an NCO.

E4.3.3.1.12. Records of nonjudicial punishment: The Applicant had an Article 15 for drug abuse.

E4.3.3.2: Capability of service:

E4.3.3.2.2.: Family and personal problems: The Applicant documented the death of his grandfather, back pain, and marriage troubles. The Board determined that none of these mitigated 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 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 determined that the Applicant had multiple chances to amend his behavior because his supervisors provided progressive discipline, and yet his misconduct escalated.

7.g. Remorse: The Applicant expressed that he deeply regrets his actions.

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

7.p. Character references: The Applicant's main character reference is a heartfelt appeal from his mother. While the Board appreciates the mother's advocacy for her son, the Board found the record evidence of the Applicant's character to be more persuasive.

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 Narrative Reason for discharge. The Applicant did not request an upgrade to the Character of Discharge or 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 Character of Discharge shall remain Under Honorable Conditions (General), the Narrative Reason shall remain for Misconduct (Drug Abuse) and the Reentry Code shall remain 2B. The DRB Presiding Officer approved the results on 19 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://afribportal.azurewebsites.us>.

Attachment:
Examiner's Brief (Applicant Only)

