

SUMMARY: The Applicant was discharged on 29 January 2015 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a Discharge Characterization 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 Character of Service.

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 multiple Article 15s and a Letter of Counseling. Her misconduct included underage drinking, marijuana use, and being late to work.

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 her misconduct was mitigated by her experience of sexual assault by her supervisor. She went through therapy and was diagnosed with bipolar disorder. After medications did not help, she turned to marijuana.

The Applicant included her DD214 and a Department of Veteran's Affairs (VA) benefit letter, showing a 70% rating, attributed to PTSD.

The Board determined to deny the Applicant's request because she failed to present substantial credible evidence that her discharge 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 boxes for "other mental health" and "sexual assault/harassment" on the application. The Applicant contended "I was a victim of MST during my service from my immediate supervisor [named]. I started therapy was hospitalized and could not cope, while hospitalized at SAMMC I was diagnosed with BPD. No medications were relieving my hurt. I turned to marijuana leading to separation."*

2. Did that condition exist/experience occur during military service? *A review of the Applicant's records revealed the Applicant received mental health service including inpatient, intensive outpatient, and outpatient services during her time in service. The Applicant's records revealed the Applicant received the diagnosis of borderline personality disorder and depressive disorder during her time in service. The Applicant contended she experienced MST (military sexual trauma) during her time in service but did not provide any additional clarifying information regarding this experience such as a timeline of when MST occurred.*

Based on a review of the Applicant's complete medical and mental health record, there is no objective evidence in the military records to support the Applicant's experience of MST. There is no reference to this MST in any available record. The Applicant included MST in one sentence of testimony to the board with her application and did not provide any clarifying information about her MST experience. She did not provide any clarifying details about her experience such as when the MST occurred, the nature of the incident, and how it impacted her mental health and overall functioning in the military. A comprehensive review of all available records, including a detailed social history in the Applicant's Medical Evaluation Board (MEB), revealed no evidence, testimony, disclosure, or impact statements of MST. There are no records to substantiate the Applicant's claim of sexual assault/MST. The records revealed the Applicant was a victim of childhood rape at age 16. The Applicant consistently denied any trauma symptoms associated with this event. This event occurred prior to Applicant's time in service.

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 five years, three months, seventeen days time in service.*

It is possible that the Applicant experienced MST; however, based on the available treatment records, it was not noted by the Applicant's in service providers. The providers noted that the Applicant's borderline personality disorder played the prominent role in her diminished functioning in the Air Force. The evidence the Applicant exhibited and endorsed like features of borderline personality disorder during her time in service. This condition may explain the Applicant's misconduct, but it does not mitigate the misconduct.

4. Does that condition or experience outweigh the discharge? *Because the Applicant's discharge is not mitigated or excused by a mental health condition or MST experience, 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 following two Article 15s and a Letter of Counseling, and her misconduct included illegal drug use. The Board determined that the Applicant's punishments and discharge were consistent with Air Force 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 overall average performance reports.

E4.3.3.1.12. Records of nonjudicial punishment: The Applicant had two Article 15s for drug abuse and underage drinking.

E4.3.3.2: Capability of service:

E4.3.3.2.2.: Family and personal problems: The Applicant alleges MST from a supervisor led to her marijuana use. However, the Board did not find this allegation credible because it was not corroborated by any evidence, either in the record or provided by the Applicant.

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:

6.a. Military custom is to punish to extent necessary and favor second chances: The Applicant had additional misconduct years prior to the drug abuse and recovered her high EPR ratings.

6.g. Relative severity of marijuana use: The Applicant used marijuana, and had other instances of misconduct. The Board determined that the Applicant's total misconduct was severe enough to warrant the discharge she received.

6.k. Relief is generally more appropriate for nonviolent offenses than for violent offenses: The Applicant's ARMS records do not record a violent offense.

7.c. Aggravating and mitigating facts: The Applicant alleges she used marijuana to cope with PTSD and MST. However, the Applicant's record and the Board's mental health evaluation determined that these factors did not mitigate her misconduct.

7.i. Character and reputation: The Applicant's commander stated that she had erratic and unprofessional behavior. The Board determined that this factor weighed against granting relief.

In conclusion, the Board considered that a General (Under Honorable Conditions) characterization is appropriate “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 her frequent misconduct and erratic, unprofessional behavior. 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 her discharge characterization. The Applicant did not request a 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). 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://afrbportal.azurewebsites.us>.

Attachment:
Examiner's Brief (Applicant Only)

