

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**

**SUMMARY:** The applicant was discharged on 06 February 2009 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Under Other Than Honorable Conditions (UOTHC) Discharge for Triable by Court-Martial. The applicant appealed for an upgrade of their discharge characterization.

The applicant chose a personal appearance; however, did not appear nor testify before the Discharge Review Board (DRB) via Zoom video teleconference scheduled on 09 April 2024.

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, multiple Letters of Reprimand, a Letter of Counseling, and a Letter of Admonishment. Their misconduct included: Failure to go (four times), Unlawful use of cocaine; Failure to follow a direct order from a Senior Noncommissioned Officer, Failure to follow orders and regulations, Misuse of a Government Travel Card, and a \$11,000 debt to Bank of America.

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 contested his discharge on the basis of impropriety seeking an upgrade to an Honorable service characterization. He asserted that he had begun voluntary separation actions at the time he was randomly selected for a drug urinalysis test. The test results came back positive for cocaine. He was tested a second time, and that test came back positive for cocaine and marijuana. Applicant admitted he used cocaine resulting in the second positive test, but denied drug use regarding the first test and claims he never used marijuana. For his drug use, he was tried by court martial and sentenced to reduction to the grade of E-2, restricted to the base, hard labor for 30 days and confinement for 102 days. His commander involuntarily extended his separation date to pursue a second court martial for financial irresponsibility and misuse of government funds. Applicant submitted a request to be discharged in lieu of trial by court martial and received an UOTHC service characterization. Applicant stated he received poor guidance and advice from his Area Defense Counsel, citing a personal friendship between his counsel and applicant's squadron commander. He believes that had it not been for this relationship, he would have received an Honorable discharge. He is now seeking relief from the Board because the current discharge characterization has hindered his ability to obtain VA disability benefits.

The DRB thoroughly examined the applicants' detailed accounts of their military service and found that the evidence revealed no impropriety or inequity in the applicant's discharge. The applicant voluntarily requested to be discharged in lieu of trial by court martial and stated via a signed memorandum he understood he may be discharged with an UOTHC service characterization. Prior to initiation of the applicant's second court martial where he was charged with four counts of fraud, the squadron commander had already begun initiating an administrative discharge action against the applicant for failing to arrive at his designated duty location four times, positive drug screening, court martial conviction for wrongful use of cocaine, refused to follow a verbal order, missed a scheduled flight, and failed to sign out when departing the local area. There is no evidence in the record besides the applicant's statement of any influence his squadron commander had over his defense counsel. In the absence of additional evidence beyond the applicant's account, the DRB must rely on the presumption of regularity that the applicant's counsel provided him the best advice and that the resulting discharge for the applicant was appropriate.

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 unanimously to *deny* the applicant's request to upgrade their 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 seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

**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 "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "Triable by Court-Martial," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 24 April 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)