

SUMMARY: The Applicant was discharged on 20 March 2023 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 Discharge Characterization, a change to their discharge Narrative Reason for Separation, and a change to their Reentry Code.

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 marijuana and delta 8 use, and a Letter of Counseling (LOC) for 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 his depression and anxiety, which he alleged started during his deployment, mitigated his misconduct. The Applicant stated that he feared for his life while deployed and was discouraged from seeking mental health help. When he was finally able to seek help, his first appointment was delayed, and he decided to use illegal drugs during this delay.

The Applicant included service records, character references attesting to his positive work attributes, a record of meeting his ADAPT requirements, and medical records.

The Board determined to deny the Applicant's requests because he failed to present substantial credible evidence that his 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 box for "other mental health" on the application. The Applicant contended "I kindly ask that you consider my request in view of the fact that I suffer from depression and anxiety. I started suffering of depression and anxiety when I was deployed to MSAB, Jordan."*

2. Did that condition exist/experience occur during military service? *A review of the Applicant's records revealed the Applicant was seen for one intake session at the mental health clinic during his time in service and reported he did not wish to continue services as he did not feel he needed therapeutic intervention. The Applicant's records also revealed the Applicant received medication management of mental health medications from his primary care provider during his time in service although the Applicant discontinued the medications almost immediately stating he felt no change in taking them and reported he believed his adjustment was improving without intervention. The Applicant was given the diagnosis of adjustment disorder with mixed anxiety and depression by his primary care provider. The Applicant's records revealed the Applicant was command referred to ADAPT due to a positive urinalysis and completed the education sessions.*

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, eight months, twenty-nine days time in service.*

The Applicant was discharged due to drug use (marijuana). The Applicant's service records reveal a history of pre-service marijuana use, and legal charges related to drug paraphernalia. Based on the available evidence in the Applicant's records along with the Applicant's testimony in his application, there is evidence the Applicant was having difficulty adjusting to military life and difficulty re-adjusting upon return from his deployment. However, the Applicant acknowledged to the post-deployment assessor and to his primary care manager that he was aware that he could access mental health services earlier than his scheduled appointment if he needed, and he declined. The Applicant's mental health evaluation revealed sub-clinical symptoms and the Applicant reported he did not wish to continue with mental health service as he believed that he was re-adjusting without intervention. The Applicant's ADAPT evaluation revealed the Applicant acknowledged using prohibited vape products to reduce stress for months. There is no evidence the Applicant was unaware of the Air Force's zero tolerance policy on drug use. The Applicant reported he chose to use drugs (Delta 8, Delta 9) in a way that was incompatible with military service, which may explain the Applicant's drug use, but it does not mitigate the Applicant's misconduct. Stress is not a mitigating mental health condition; based on a review of the Applicant's reported mental health symptoms, they did not meet criteria for a mental health diagnosis and the Applicant did not want to receive mental health treatment to resolve his symptoms, thus the Applicant's symptoms would not mitigate misconduct.

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 following an Article 15 for 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 relieve 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 a deployment during his short service.

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

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 Board observed that the Applicant was discharged promptly after his positive urinalysis test. Nonetheless, drug use is incompatible with military service and the Board determined that the Applicant's discharge was equitable.

7.c. Aggravating and mitigating facts: The Applicant alleges he was stressed from attending school while working and frustrated by a delay in seeing mental health. The Board determined that these stressors are common among military members and do not condone or mitigate illegal drug use.

7.p. Character references: The Board determined that the Applicant's reference letters were not substantial in comparison to his illegal drug use.

In conclusion, the Board considered that a Under Honorable Conditions (General) Discharge 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 his frequent misconduct. To be eligible for an Honorable characterization, the service must be so meritorious that a “General” Discharge 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 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 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)