

SUMMARY: The Applicant was discharged on 8 September 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Misconduct (Drug Abuse). The Applicant appealed for an upgrade of their discharge characterization.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 06 June 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 the following documented misconduct leading up to their discharge:

-Article 15 for wrongful use of marijuana, a Schedule I controlled substance on two separate occasions.

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 contended that Military Sexual Trauma (MST) they experienced affected their ability to meet military standards and led to their discharge. The Applicant stated an upgrade would acknowledge the adversity they faced and would provide them a fair representation of their service. The Applicant stated that reconsideration would allow access to benefits for vital post-service support.

The DRB determined that the Applicant's discharge was inequitable, leading to a recommendation to upgrade the service characterization. The Applicant's records showed evidence of MST and a diagnosis of a mental health (MH) condition during service. The Board noted that the Applicant sought mental health treatment and their records indicated that they had difficulty accessing care at the time, which was taken into consideration by their immediate commander with an honorable service characterization discharge recommendation. However, a subsequent legal review resulted in the decision by the approval authority to discharge the Applicant with a general characterization due to a second positive urinalysis for marijuana. Taking into account the "Wilkie Memo," the Applicant's diagnosed mental health condition, challenges in obtaining treatment, and ongoing contact from the MST perpetrator, which further complicated their mental health, the Board found a connection between the mental health condition and the misconduct, therefore, mitigating the misconduct.

LIBERAL CONSIDERATION: Due to evidence of a mental health diagnosis and/or experiences of sexual assault or sexual harassment and/or records documenting that one or more symptoms of mental health conditions and/or experiences of sexual assault or sexual harassment 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) or 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 "sexual assault/harassment" on the application. The Applicant contended "Due to military sexual trauma, my service was unfortunately impacted. The trauma I endured significantly impacted my ability to meet the military's standards, leading to my discharge. The circumstances surrounding my departure were influenced by the trauma's profound impact on my mental and emotional well-being".

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

Based on a review of the Applicant's in-service records, the Applicant sought and received mental health services after their reported experience of sexual assault in service. The Applicant's records revealed the Applicant received the diagnosis of Other Specified trauma related disorder during their time in service.

3. Does that condition or experience actually excuse or mitigate the discharge?

Based on review of the available records, the Applicant's experience of sexual assault occurred in/around May 2020. The Applicant's records revealed the Applicant reported their experience of sexual assault upon their return from deployment and continued to receive contact from the alleged offender after their expedited transfer. Based on the available records, the Applicant's squadron commander considered the Applicant's claims of inadequate access to mental health care and the impact the experience had on the Applicant's functioning in the recommendation for an honorable characterization of service. The available records from the Applicant's in-service mental health provider indicated the Applicant was experiencing marked distress related to their assault from continued communications from the alleged offender. There is evidence the Applicant's experience of sexual assault and their mental health condition, were considered during the Applicant's discharge process and may have mitigated their discharge.

4. Does that condition or experience outweigh the discharge?

Since the condition mitigates the discharge, the condition outweighs the discharge.

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 evidence of inequity, but no evidence of impropriety. The Board found the following Wilkie Memo factors applicable to this case:

An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct. The Applicant's evaluations reflected level 5 ratings (Exceeds most, if not all expectations) June 2018 through March 2021.

Requests for relief based in whole or in part on a mental health condition, should be considered for relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety. The Applicant's record reflected MST with related MH and a nexus to the misconduct.

Relief is generally more appropriate for non-violent offenses than for violent offenses. The Applicant's marijuana use was non-violent.

The aggravating and mitigating facts related to the record or punishment from which the veteran or Service member wants relief. The Applicant sought MH assistance and experienced challenges getting assistance.

Acceptance of responsibility, remorse, or atonement for misconduct. In the response to the member's discharge recommendation, the Applicant stated, "I regret not choosing a better coping mechanism to deal with the trauma that I have experienced during my time in the military. I take full accountability for wrongfully experimenting with marijuana..."

The degree to which the requested relief is necessary for the Applicant. The Applicant stated that reconsideration would allow access to benefits for vital post-service support.

Character references. The Applicant had multiple character references in their service record as part of their discharge package attesting to their dependability, being outgoing, animated, trustworthy, and responsible. The Applicant's character references also attested to their MST and claims of not receiving proper mental health care.

FINDING: The DRB voted unanimously to *approve* the Applicant's request to upgrade their discharge characterization.

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 inequitable. Therefore, the awarded characterization of service shall change to "Honorable," the narrative reason for separation shall remain "Misconduct (Drug Abuse)," and the reentry code shall change to "2C." The DRB results were approved by the Presiding Officer on 3 September 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)