

SUMMARY: The applicant was discharged on 15 August 2014 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 his discharge characterization and a change to the discharge narrative reason.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 13 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 an Article 15 for marijuana use and possession.

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 character of service and separation code. He claims to have been falsely accused of a crime. He stated that he attended a party with a civilian woman who invited civilian friends, one of whom brought marijuana to the party. The woman became drunk and made sexual advances on the applicant and others at the party, who all rebuffed her. After the party, she accused him of using marijuana. The applicant was given a urinalysis and interrogated about cannabis being at the party. He was negative for drugs on two urinalysis tests.

The applicant provided awards for good physical fitness test scores, three awards for being airman of the month, an award for being honor guard member of the month, airman of the quarter, and a letter of appreciation.

The applicant did not specify whether he believed his discharge was improper, inequitable, or both. In such cases, the Board examines an application based on equity alone. DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E3.5.1.3.5.

The equity standards are found in DODI 1332.28 E4.3 and 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".

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). The following items are relevant to the applicant's case.

E4.3.3. Factors warranting relief even if discharge were equitable at issuance:

E4.3.3.1: Quality of Service:

E4.3.3.1.1. Service history, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative): *The applicant had a 5 rating on his one available EPR.*

E4.3.3.1.2. Awards and decorations: *The applicant won airman of the month multiple times and airman of the quarter.*

E4.3.3.1.3. Letters of commendation or reprimand: *The applicant had no discipline outside of his Article 15.*

E4.3.3.1.8. Other acts of merit: *The applicant served on his base honor guard.*

E4.3.3.1.12. Records of nonjudicial punishment: *The applicant received an Article 15.*

E4.3.3.2. Capability to serve, as evidenced by factors such as:

E4.3.3.2.1. Total Capabilities. This includes an evaluation of matters, such as age, educational level, and aptitude scores. Consideration may also be given to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to military service: *The applicant excelled at his PT tests, had no discipline outside of the incident causing his Article 15, and was praised by his supervisor for his ability to quickly learn new jobs and work at a high level.*

E4.3.3.2.3. Arbitrary or Capricious Action. This includes actions by individuals in authority constituting a clear abuse of such authority and, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service: *The applicant's commander decided to convict the applicant for using and possessing drugs, despite the applicant passing two urinalysis tests promptly after a party where someone accused him of using marijuana. The applicant's commander also maintained the conviction and proceeded with the discharge despite one witness recanting her statements, and another airman declaring she knew a second witness to have a reputation for lying.*

Guided by the Wilkie Memo, the Board considered the following factors:

6.a. Military custom is to punish to extent necessary and favor second chances: *The applicant had no progressive discipline for associating with a bad crowd that led to the accusations.*

6.c. An honorable characterization does not require flawless service: *The applicant has no other misconduct except for being accused of using marijuana.*

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

7.a. An applicant's candor: *The applicant's story has remained consistent since the initial accusation.*

7.c. The aggravating and mitigating facts related to the record or punishment from which the veteran or Service member wants relief: *The applicant contends that the accusations came from someone whose sexual advances he declined, and who later appears to have recanted her story. The other person did not respond to calls to verify her story by the applicant's legal team, and one airman provided a declaration stating the witness was a known liar. The major mitigating fact is that the applicant was negative for drug use just days after he allegedly consumed marijuana.*

7.f. Length of time since misconduct: *The applicant was discharged nearly ten years ago and still seeks relief.*

7.p. Character references: *The applicant provided character references submitted during his discharge which show him to be an excellent worker.*

After reviewing the applicant's contentions, his records, and the Board's instructions, the Board was persuaded that the applicant's discharge is inequitable. In particular, the Board found the commander's decision to issue an Article 15, despite a negative urinalysis test, to be arbitrary and capricious. In the Board's view, the commander's decision had no support in fact or law.

FINDING: The DRB voted unanimously to *approve* 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 inequitable. Therefore, the awarded characterization of service shall change to "Honorable," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall change to "3K." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 3 July 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)

