

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENTCASE NUMBER
FD-2023-00752

SUMMARY: The applicant was discharged on 28 February 2022 in accordance with a Special Court Martial Order with a Bad Conduct Discharge for Court Martial (Drug Abuse). The applicant appealed for an upgrade of his discharge characterization.

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 a Court Martial for using and distributing illegal drugs.

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. The applicant stated that since discharge, he has earned an associate's degree in nursing. He added that he regrets his mistakes.

The applicant included a copy of his DD214 and two diplomas, one for an associate degree in nursing.

The applicant also included many character references which were submitted at the time of his discharge. The references attest to his professionalism and selflessness, that his drug use was out of character, his dependability, his high character, his likelihood of rehabilitation, that his misconduct was a lapse in judgment, his remorse, his trustworthiness, his hard work, his responsibility, his kindness, and his role as a mentor.

Upon review of an applicant's Bad Conduct Discharge as adjudged by a Special Court-Martial, the Board may change the punitive discharge to an administrative discharge for the purposes of clemency, if warranted. The Board therefore considered the applicant's requests under its equity standards, which also apply to clemency requests. These are found in DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards* 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".

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 some high ratings on EPRs mixed with some low ratings.*

E4.3.3.1.2. Awards and decorations: *The applicant had an Air Force Achievement medal for his work at his unit.*

E4.3.3.1.11. Convictions by court-martial: *The applicant was convicted by court martial after his guilty pleas to using and distributing drugs.*

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's 17 character references consistently depict an airman who was highly trusted by his colleagues in both his professional and personal capacities. The references were from multiple officers and peers.*

6.a. Military custom is to punish to extent necessary and favor second chances: *The applicant appears to have had a single instance of misconduct.*

6.g. Relative severity of misconduct over time, including marijuana use: *The applicant pled guilty not just to use, but also distribution of drugs. The severity of distribution has not reduced over time.*

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.d. Positive or negative post-conviction conduct, including any arrests, criminal charges, or any convictions since the incident at issue: *The applicant earned an associate's degree.*

7.f. Length of time since misconduct: *The applicant's misconduct occurred in 2017.*

7.g. Acceptance of responsibility, remorse, or atonement for misconduct: *The applicant stated that he is extremely remorseful of his bad choices.*

7.h. The degree to which the requested relief is necessary for the applicant: *The applicant requests an upgrade to have a fresh start to life after earning his degree, but did not specify how his bad conduct discharge is impacting him.*

7.i. Evidence of rehabilitation: *The applicant provided evidence he has earned an associate degree.*

7.p. Character references: *The applicant provided 17 strong character references from a variety of officers, colleagues, and family attesting to his positive character traits.*

After reviewing these equitable factors and the evidence submitted, the Board determined that the applicant's discharge remained equitable and clemency was not warranted. The applicant had some positive factors favoring clemency, including new evidence of rehabilitation efforts by earning an associate degree. While this is a positive development, the Board determined that it is not substantial enough to warrant clemency following a very serious crime, which included not just use of drugs, but also distribution. Additionally, the Board found that although the applicant's character references indicated positive character traits, they all predated his discharge and therefore could not show post-discharge rehabilitation.

FINDING: The DRB voted unanimously to **deny** the applicant's request to upgrade his 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 proper and equitable. Therefore, the awarded characterization of service shall remain "Bad Conduct," the narrative reason for separation shall remain "Court Martial (Drug Abuse)," and the reentry code shall remain "2L." 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)

