

SUMMARY: The Applicant was discharged on 01 September 2010 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, a change to the discharge narrative reason, and a change to the reentry code.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 18 June 2024. The Applicant was 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 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 their characterization. The Applicant's counsel submitted a brief to the Board, explaining that while the Applicant was separated from service for drug use, their mental health condition, high quality of service, and post-discharge conduct far outweighed the severity of this one-time misconduct and warranted an upgrade. They also argued that the current characterization was too harsh and inequitable. Additionally, they pointed to improprieties in the DD-214 that did not follow the required procedures for discharging the Applicant.

The DRB found after a records review that while the Applicant's counsel claimed there were three DD214s in the record, this was incorrect. The first DD214 was voided, and an amendment revoking it was issued effective August 30. This is an important note as The Applicant remained under UCMJ authority and would not officially separate from active duty until after that date, despite out-processing and starting terminal leave. Furthermore, the Board noted a General discharge is consistent with the Applicant's drug abuse. The DRB found no evidence indicating the Applicant was unaware of the Air Force's zero-tolerance policy for illegal drug use, which the vast majority of Airmen adhere to. Although a procedural error was identified, correcting it would not have changed the discharge outcome. The Board determined that the negative aspects of the Applicant's willful misconduct outweighed the positive aspects of their military service and so the discharge given was appropriate.

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 through counsel contends that their mental health deteriorated as a result of a service-related accident and that “The depression that [The Applicant] experienced in the summer was directly related to the knee injury they suffered in 2010.”

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

There is no evidence of a MH condition during military service. The record shows a VA C&P examination diagnosis of unspecified anxiety disorder, which was noted as situational anxiety that occurs in social situations as well as during certain medical calls when working as an EMT. The examiner wrote, “Vet reported that these anxiety issues began after their separation from the military.” The exam noted that the Applicant had received medication for brief treatment of depression with anxiety in 2013, 3 years after separation. they had not received any MH treatment since 2013. The record also showed that the Applicant had a knee injury that was evaluated, 11 days prior to their separation physical. They were diagnosed with right knee sprain. The injury occurred on 5 June. There was no joint swelling on examination. At the separation examination, the Applicant reported improvement of the knee.

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

There was no evidence of a MH condition to excuse or mitigate the discharge. Although chronic pain is associated with producing stress, depressed mood and anxiety that could lead to attempts at self-medicating, there was no evidence in the available record to support a chronic pain condition or that marijuana use was in response to pain-producing stress, depression or anxiety. As noted above, the Applicant denied all MH symptoms on two occasions during physical examinations, and there was no evidence of chronic pain condition.

4. Does that condition or experience outweigh the discharge?

Since there is no evidence of a MH condition to excuse or mitigate the discharge, there is no condition or experience to outweigh 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 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 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 "General," the narrative reason for separation shall remain "Misconduct (Drug Abuse)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 5 August 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)