

SUMMARY: The Applicant was discharged on 22 July 2019 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 18 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. Their misconduct included: The wrongful use of marijuana.

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 in characterization, stating that during their time at Nellis Air Force Base, they suffered from undiagnosed anxiety and depression, which led them to self-medicate by smoking weed. They sought an upgrade to access educational benefits. The Applicant submitted medical documentation of their diagnosis, counseling records, Veteran Affairs rating, and other post-service documents.

The DRB determined that there is no evidence in the available records to support the Applicant's request for an upgrade. The DRB is not an investigative body that presumes regularity in governmental affairs unless substantial credible evidence contradicts this presumption. The presumption of regularity holds that commanders, supervisors, and other officials acted fairly and in good faith in the absence of evidence to the contrary. The Applicant must bear the burden of providing evidence to overcome this presumption, as the Board will only grant relief if sufficient evidence shows the discharge was improper or inequitable. Additionally, the Applicant failed to establish a clear connection between their mental health condition and how it would mitigate their misconduct. The DRB determined that the severity of the Applicant's deliberate misconduct outweighed any positive contributions from their service.

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 contends that during his time in service he suffered from undiagnosed anxiety and depression and for that reason he made “a regrettable decision to smoke weed to try to help.”

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

The Applicant was diagnosed with adjustment disorder after his urine tested positive for marijuana. There was no indication of any mood or anxiety symptoms prior to the misconduct. He presented to MH 3 months prior to separation. It was determined that he had an adjustment disorder due to the stress of the OSI investigation, family conflicts and his report of loss of friends (killed).

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

There is no evidence that the Applicant self-medicated a MH condition, since there was no evidence of a MH condition at the time of the misconduct. As noted above, the Applicant did not seek MH care until after the investigation into his positive urine. He deferred an assessment with the substance abuse clinic and did not follow-up with MH after the first counseling session. Therefore, there is no evidence that any MH condition excused or mitigated the discharge.

4. Does that condition or experience outweigh the discharge?

Since there is no MH condition that excuses or mitigates the discharge, there is no condition or experience that 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 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)

