

SUMMARY: The Applicant was discharged on 28 July 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, 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 8 August 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 Tetrahydrocannabinol (THC), a Controlled Substance.

- Summary Court Martial for Violation of UCMJ, Article 112a, divers occasions wrongfully using THC.

Plea: Guilty; Finding: Guilty

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 their actions leading to their drug use was a result of their mental health, and their request for more assistance was not met. The Applicant stated that after returning from in-person therapy, their medications were no longer being refilled, and they were unable to get any refills. They experienced difficulty sleeping and had frequent panic attacks and Post Traumatic Stress Disorder (PTSD) episodes, which made it impossible to call out of work. The Applicant resorted to using THC, which they had read studies about its ability to prevent dreams and help them sleep through the night. They stated their monthly rotating shifts from 0800-1600, 1200-2000, and 1600-0000 did not help. The Applicant clarified that they were not using THC for pleasure and was not coming to work high. They solely used it for sleep and their mental health.

The Applicant's records revealed that they tested positive for and reported using THC on numerous occasions. After consulting with counsel and submitting an unconditional Board waiver, the Applicant pled guilty at a Summary Court-Martial for drug abuse in violation of the Uniform Code of Military Justice (UCMJ). The Applicant was found to have continuously used Tetrahydrocannabinol (THC) at exceedingly high rates over a span of three months. Due to this misconduct, the Applicant was not eligible for probation and rehabilitation (P&R) and was discharged.

The Discharge Review Board determined that the Applicant's misconduct was not mitigated by their mental health condition, despite the Applicant's claim that their drug use was a result of their mental health and lack of assistance from the military. The Applicant had a prior history of PTSD and was receiving mental health services during their time in service. However, the Board determined that the Applicant was aware of the military's zero tolerance policy on drug use to include THC, had access to medical and mental health resources, and despite these resources, continued to use THC even while in residential psychiatric treatment. The intent of liberal consideration does not apply to conditions that existed prior to service (EPTS) with no evidence of service aggravation. The Board determined that the Applicant's mental health condition did not mitigate their misconduct and does not warrant an upgrade.

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 box on the application for "PTSD." The Applicant contended "I request the Board grant my change of discharge as all my actions leading to the event stem around my mental health and me asking for more assistance and then promptly after coming back from an in-person therapy which I was sent to in [location] all my medications were no longer being refilled and I could not get any refills. During the time I was not sleeping and waking up many times and when in the military there is no calling out of work even if you are suffering from panic attacks and PTSD episodes so I had resorted to using THC as I had read studies about it that it would prevent dreams all together and help me sleep through the night. The monthly rotating shifts from 8-4 then 4-12 then 12-8 rotating in that schedule did not help either. I was not using for pleasure or coming to work high it was solely for sleep and my MH."

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

The Applicant checked the box on the application for "PTSD." A review of the Applicant's in-service records revealed the Applicant received a diagnosis of PTSD during their time in service related to traumatic childhood experiences. This condition is considered to have EPTS and there is no evidence of service aggravation beyond the natural progression of the illness. The intent of liberal consideration does not apply to EPTS conditions with no evidence of service aggravation.

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

A review of the Applicant's DD214 revealed the Applicant was discharged with a general character of service due to misconduct (drug abuse) with two years, twelve days' time in service. A review of the Applicant's time in service revealed they received extensive mental health services including inpatient, outpatient, intensive outpatient, and residential treatment upon arriving at their first duty station related to their traumatic childhood experiences. The Applicant reported to in-service providers that they had difficulty sleeping as a result of their PTSD, specifically due to nightmares of their childhood experiences which caused them to use marijuana. The Applicant's records revealed the Applicant tested positive and reported using THC on numerous occasions, including while in residential psychiatric treatment. A review of the available medical records revealed the Applicant reported both sleep difficulties and marijuana use prior to service, which may explain the Applicant's choice to use marijuana but does not excuse the Applicant's

misconduct. There is no evidence the Applicant was unaware of the Air Force's zero tolerance policy on drug use. EPTS conditions are not generally considered under the intent of liberal consideration.

4. Does that condition or experience outweigh the discharge?

There is evidence the Applicant endorsed mental health symptoms during their time in service. A review of the Applicant's records revealed the Applicant's condition to have existed prior to service (EPTS) with no evidence of service aggravation. Because the Applicant's misconduct is not mitigated or excused by a mental health condition, the Applicant's discharge is also not outweighed.

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 DRB results were approved by the Presiding Officer on 16 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)