

SUMMARY: The Applicant was discharged on 21 January 2020 in accordance with Air Force Instruction, 36-3207, *Separating Commissioned Officers*, with a General Discharge for Misconduct (Drug Abuse). The Applicant appealed for an upgrade of their discharge characterization and a change to the discharge narrative reason.

The Applicant requested the Board be completed based on a records review. The Board was conducted on 17 September 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 3, 4-methylenedioxymethamphetamin (ecstasy), a Scheduled I controlled substance.

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 sought an upgrade of all aspects of their separation, challenging both the equity and propriety of their discharge. The Applicant's counsel argued that the evidence did not support allegations of misconduct related to drug abuse, asserting that the Applicant had never engaged in such behavior. They further contended that the separation authority erred in both the decision to discharge the Applicant and in assigning a general characterization instead of an honorable discharge. The Applicant's counsel also claimed that the Applicant had been suffering from a mental health condition during their military service, which should have qualified them for relief under the Hagel, Kurta, and Wilkie memoranda. Additionally, they argued that the Applicant's overall service record and post-service conduct warranted an honorable discharge. Counsel requested a thorough review of the Applicant's full military record to support their request for relief. The Applicant also submitted several letters from when they were discharged that attested to their positive efforts and contributions in the military, despite the difficulties they had faced.

The DRB found that while the Applicant's counsel argued the drug abuse allegations lacked sufficient evidence, no substantial documentation beyond personal statements and a VA rating was provided to challenge the discharge. The Applicant did not submit any in-service or post-service mental health records to support their claims. Though the Applicant linked their drug use to grief over their brother's suicide, the Board determined this did not excuse the misconduct, as the Applicant knowingly used a mind-altering substance/drug in violation of military regulations. The Board also noted the absence of evidence of rehabilitation or positive post-service conduct to justify an upgrade, and while letters of support

acknowledged the Applicant's contributions, they also underscored the seriousness of the offense. Finding no impropriety or inequity in the discharge process, the Board affirmed the narrative reason—misconduct (drug abuse)—was appropriate and concluded that the severity of the misconduct outweighed the Applicant's positive service record, upholding the general discharge

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 boxes for "PTSD" and "other mental health" on the application. The Applicant, through counsel, contended "[the Applicant] was suffering from a mental health condition while in service and at the time of his discharge, which qualifies him for consideration and relief pursuant to the Hagel, Kurta, and Wilke Memorandums."

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

As noted in the Applicant's previous request for relief to the Board, there is no evidence or records the Applicant sought or received any mental health treatment during his time in service. There is no evidence the Applicant exhibited or endorsed any clinically significant features of a mental health condition, during his time in service. There is no evidence the Applicant received the diagnosis of PTSD, or any other mental health diagnosis, during his time in service.

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 six years, six months, two days' time in service. A review of the Applicant's prior request for the relief to the Board revealed the Applicant contended his drug use in service was a "momentary lapse in judgement." A review of the Applicant's discharge package revealed the Applicant was discharged due to misconduct, specifically drug abuse of 3,4-methylenedioxymethamphetamine, commonly known as ecstasy. The Applicant stated in his response to his referral OPR that used ecstasy in a social setting, with bad influences during EDC (Electric Daisy Carnival) to celebrate his promotion to Captain and his 25th birthday. There is no evidence the Applicant sought or received any mental health treatment during his time in service. There is no evidence the Applicant exhibited or endorsed any clinically significant features of a mental health condition, during his time in service. There is no evidence a mental health condition caused or mitigated the misconduct that led to the Applicant's discharge.

The Applicant, through counsel, again submitted his VA rating, but again did not submit any in service or post-service treatment records, as evidence in support of his claim. There is no evidence the Applicant has received the diagnosis, in service of PTSD or any other mental health condition. Regarding the Applicant's concurrence with his VA rating, the VA operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a

given condition may improve or worsen over the life of the veteran. At the “snapshot in time” of the Applicant’s service, there is no evidence the Applicant had a mental health condition that caused or mitigated the misconduct(s) which led to the Applicant’s discharge.

4. Does that condition, or experience outweigh the discharge?

Based on the available evidence and records, the Applicant acknowledged during disciplinary proceedings that he used ecstasy in a social setting to celebrate his birthday and his promotion to Captain. This may explain the Applicant’s choice to use drugs, but it does not excuse the Applicant’s misconduct. Further, there is no evidence the Applicant’s discharge is outweighed by the impact of an in-service mental health condition.

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 and to change the discharge narrative reason.

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” and the narrative reason for separation shall remain “Misconduct (Drug Abuse).” The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 9 October 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)