

**SUMMARY:** The Applicant was discharged on 22 August 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General (Under Honorable Conditions) character of service for Misconduct (Drug Abuse). The Applicant appealed for an upgrade of their character of service.

The Applicant requested the Board be completed based on a records-only review. The Board was conducted on 31 October 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 . 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 DRB provided a notice to inform the service member of resources available to help answer their questions about the application process and/or to help them supplement their application, to include information on the types of evidence that can be submitted to support a claim; information regarding potential eligibility for mental health treatment and evaluation services offered by the Department of Veterans' Affairs (VA); general information regarding Veterans Service Organizations that may assist with DRB applications, and their right to retain counsel; a link to a database of legal services organizations that serve members of the military, veterans, and their families; the weblink to the VA's Directory of Veteran's Service Organizations; and information regarding reasonable accommodation requests from the DRB in the application and adjudication process.

The Applicant's record of service included the following documented misconduct leading up to their discharge:

- Letter of Reprimand (LOR) for making a false statement.
- Article 15 for wrongfully using tetrahydrocannabinol (THC) Delta-8.

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 anxiety and depression were exacerbated by the high-stress environment and demanding responsibilities of their job. They contended that those conditions significantly impaired their ability to fulfill their assigned duties and maintain their mental well-being. The Applicant contended that their use of drugs was utilized as a coping mechanism and was a symptom of their mental health struggles, rather than the primary cause of their discharge.

The Applicant provided the following documents in support of their claim: Character Letters; Counseling Treatment Records; Mental Health Appointment Dates; Disability Rating.

The Applicant was discharged for the wrongful use of THC Delta-8.

The DRB determined there was sufficient evidence that the Applicant experienced mental health conditions during service and found evidence that the Applicant sought treatment, but did not receive sufficient treatment, in which the Applicant then self-medicated their mental health condition with Delta 8. The DRB found sufficient evidence of a nexus between the Applicant's misconduct and their mental health conditions that mitigate the misconduct that led to their discharge.

**LIBERAL CONSIDERATION:** Due to the Applicant's contentions or 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 stated they battled with anxiety and depression for years that significantly impacted their ability to fulfill their duties and maintain their mental well-being. They stated they were in a high-stress environment with demanding responsibilities. The presence of anxiety and depression impaired their ability to perform effectively and cope with challenges, including the intense loss of a close cousin. The conditions they experienced contributed to their reliance on drugs as a coping mechanism. The Applicant's substance use was a symptoms of underlying mental health struggles rather than deliberate misconduct.*

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

*There is sufficient evidence the Applicant had psychological problems diagnosed as an adjustment disorder with anxiety and depressed mood, prior to the misconduct. There is sufficient evidence of Mental Health (MH) treatments dating back one year prior to the misconduct. The Applicant had several MH encounters documenting significant mood and anxiety symptoms prior to the misconduct.*

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

*The Applicant in their application stated they relied on drugs as a coping mechanism. In their response to the Non-Judicial Punishment (NJP), the Applicant stated they had been dealing with severe anxiety and chose the wrong way to cope. That the Applicant used marijuana prior to service, may reflect a history of self-medicating anxiety and or mood symptoms. The Applicant stated in their response to NJP that they were treating their anxiety symptoms with marijuana is significant. They admitted their father purchased them a vape pen that contained the drug and once they became aware, continued to use the product because of the relaxed feeling they experienced. The post-service record showed diagnosis of anxiety disorder and treatment with psychotropic medication. There is evidence that their prescribed medication was effective in treating their anxiety symptoms demonstrated by the absence of evidence of self-medicating after being prescribed antianxiety/antidepressant medication. This advisor concluded, there was evidence that the Applicant likely used marijuana to relieve their anxiety symptoms. Although the Applicant stated their MH condition impaired their ability to perform their duties effectively, this was not reflected in their overall performance assessment over the duration of their military career. The record showed they met or exceeded most expectations in each annual evaluation. Thus, there was insufficient evidence that their MH condition had a negative effect on performance in the five years prior to discharge. In conclusion, there was sufficient*

*evidence that the Applicant had a MH condition that mitigates their discharge for the misconduct of drug abuse.*

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

*The mental health condition mitigates the discharge and also outweighs the original discharge. There is evidence of an injustice in the discharge based on mitigating factors in this case.*

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 evidence of inequity.

**FINDING:** The DRB voted unanimously to **approve** the Applicant’s request to upgrade their character of service. The Board also voted unanimously to **approve** a change the 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 inequitable. Therefore, the awarded characterization of service shall change to “Honorable,” the narrative reason for separation shall change to “Secretarial Authority,” and the reentry code shall change to “2C.” The DRB results were approved by the Presiding Officer on 14 November 2024. If desired, the Applicant can request a list of the Board members and their votes by writing to:

Air Force Discharge Review Board

3351 Celmers Lane

Joint Base Andrews, MD 20762-6435

Instructions on how to appeal an AFDRB decision can be found at

<https://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)