

SUMMARY: The Applicant was discharged on 22 July 2019 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions (UOTHC) 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 separation code.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 22 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 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 marijuana
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- Letter of Reprimand for 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 to their discharge characterization, narrative reason, and separation code to be eligible for Veteran benefits to treat their mental health issues and for access to greater job opportunities. The Applicant contends their use of THC was a result of improperly treated mental health issues caused by their military service and family issues. They claimed they were never presented with the alternative of denying the allegations against them in the special court martial. In addition, the Applicant claims their discharge was wrongful due to not being considered under the retention criteria.

The DRB determined there was no evidence to support impropriety or inequity of the Applicant's discharge. The Applicant received an Under Other Than Honorable Conditions (UOTHC) discharge which is appropriate when a pattern of behavior or one or more acts or omissions that constitute a significant departure from the conduct expected of members per DAFI 36-3211, *Military Separations*, paragraph 3.14.1.3. The counsel's supplemental brief and the Applicant's character statement are contradictory to the information available for review in the Applicant's service medical records, mental health records, and administrative records. It was revealed the Applicant tested positive on three occasions at progressively higher levels of THC. The Applicant was on prescription medication for their mental health issues but choose to consume THC edibles. Their records revealed the Applicant defended their use of THC products as appropriate because use of THC is legal in some states. The Board acknowledges the Applicant's current

discharge characterization renders them ineligible for Department of Veteran Affairs benefits. However, this is not a matter of inequity or impropriety which would warrant an upgrade and the DRB does not have authority to upgrade a discharge for the sole purpose of facilitating access to the Department of Veteran Affairs benefits.

The Applicant contended they were not given the option to deny the allegations against them. However, their administrative records included an unconditional waiver signed by the Applicant, which waived their right to an administrative board hearing and acknowledged the possible consequences. Additionally, the Applicant submitted a plea agreement waiving their right to plead not guilty in exchange of avoiding a bad conduct discharge.

The Applicant claimed they were unaware of the retention criteria, but their administrative records revealed they did not present any relevant matters to demonstrate they met the retention criteria. Furthermore, they did not provide additional proof to support this claim. Per DAFI 36-2023, *The Secretary of the Air Force Personnel Council*, paragraph 3.2.4 "The DRB is not an investigative body and presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence to overcome this presumption. The presumption of regularity dictates that, absent evidence to the contrary, commanders, supervisors, and other officials involved with an action acted fairly and in good faith. The Applicant bears the burden of providing evidence to overcome this presumption, and the board will only grant relief if it determines there is sufficient evidence to conclude the Applicant's discharge was not proper or equitable."

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?

Yes. The applicant checked the box for "other mental health" on the application. The applicant, through counsel, contended "[the applicant] requests and upgrade of the characterization of her discharge to "honorable" and change the narrative reason to "administrative" with a corresponding separation code because her unintentional and intentional use of THC was the result of improperly treated mental health issues caused by her military service and family issues."

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

Yes. Based on a review of the available records, there is evidence the applicant received mental health services during her time in service for symptoms relating to childhood trauma, marital stress, and family of origin issues. There is evidence the applicant received mental health services during her time in confinement related to dissatisfaction with being in confinement and difficulty sleeping. The applicant's records also revealed the applicant was command referred to ADAPT during her time in service due positive tests for THC.

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

Yes. A review of the applicant's DD214 revealed the applicant was discharged with an Under Other than

Honorable character of service due to misconduct (drug abuse) with four years, nine months, twenty eight days time in service.

A review of the applicant's written narrative testimony was contradictory to the information available for review in the applicant's in-service records. The applicant's in-service records revealed the applicant tested positive on three occasions at progressively higher levels of THC. The applicant's records revealed the applicant defended her use of THC products during her time in service as appropriate because use of THC is legal in some states and something she chose to do because her prescriber would not change her medications. Also, at the time the applicant was in confinement she reported that none of the therapy or medication she had been given was helpful to her and she wanted nothing more than to get out of the Air Force regardless of the characterization. The applicant's testimony in her narrative stated "my psychologist and I were making great progress before my exit from service..."

A review of the applicant's in-service records revealed the applicant reported a history of preservice childhood abuse. A review of the applicant's records revealed the applicant's maladaptive coping skills and mental health symptoms in service were likely due to her pre-service experiences. The applicant's symptoms of irritability, anger, and depressed mood are as likely as not conditions that existed prior to service (EPTS) and are not considered under the intent of liberal consideration. There is no evidence of service aggravation. There is evidence the applicant experience multiple psychosocial stressors during her time in service which exacerbated her rumination of pre-service experiences, but this does not constitute service aggravation. Further, the applicant reported that during her time in the Air Force the support structure provides by the Air Force, including the final two and half years in service with mental health, medication management, and marital therapy services resulted in stabilization of the applicant's symptoms. Additionally, the applicant's defense counsel and the applicant made the applicant's mental health condition known to the discharge authorities at the time of discharge

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

There is no evidence of service progression beyond the natural progression of the illness caused by the military to the applicant's EPTS condition(s) resulting from her childhood trauma. EPTS conditions are excluded from the intent of liberal consideration, thus the applicant's discharge is 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 separation code.

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 "Under Other Than Honorable Conditions (UOTHC)," 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 14 November 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, MD 20762

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

<https://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)