

**SUMMARY:** The Applicant was discharged on 21 March 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a Under Honorable Conditions (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 22 October 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 failing to refrain from leaving their residence while on a restriction of movement order
- 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 stated they were sexually assaulted but did not report the incident due to the fear of not being believed. They stated after the sexual assault they begin to experience anxiety attacks. The Applicant stated the individual that assaulted them started rumors in the workspace about them having sexual relations resulting in unit members treating them unfairly. They confided in their First Sergeant about the mistreatment and the night of the assault. They claim after the conversation with their First Sergeant they felt they became more of a target. The Applicant states during a conversation with their supervisor, they were informed the individual that assaulted them was under investigation for sexual assault, so they shared their experience in hopes that it would be reported which did not happen. Due to the stress of the sexual assault, personal matters, and the pandemic restricting their travel they sought help from mental health. They were prescribed medication but stated it did not help with their symptoms, so they experimented with CBD. Although unfamiliar with the regulations regarding CBD, they decided to buy some CBD cigarettes. They stated the carton said the cigarettes were 100% THC free. They were arrested on the flight line while smoking one of the cigarettes resulting in a failed drug urinalysis test leading to their discharge from the military.

The Discharge Review Board (DRB) concluded that there was no evidence to support the claim of inequity or impropriety in the Applicant's discharge from the Air Force. A thorough review of the Applicant's administrative, medical, and mental health records revealed that they had denied experiencing any instances of sexual assault during medical and mental health visits, despite being explicitly asked about such

experiences. The records showed that the Applicant had sought mental health assistance but had also chosen to experiment with CBD products and engage in excessive drinking as a means of coping. Unfortunately, this behavior led to the Applicant failing a urinalysis test, which resulted in disciplinary action. According to the AF Form 2030, which the Applicant had signed, they were aware that drug and alcohol abuse by members of the U.S. Air Force is a serious offense that can result in disciplinary or administrative action, including discharge under less than honorable conditions. Despite this knowledge, the Applicant continued to engage in behavior that was incompatible with Air Force standards of conduct. In response to the notification of administrative discharge, the Applicant waived their rights to submit statements on their behalf, effectively giving up their opportunity to present their case.

Furthermore, the Applicant claimed to have been targeted and subjected to unfair treatment but failed to provide any supporting documentation or evidence to substantiate these claims. As stated in Air Force Instruction (AFI) 36-2023, *The Secretary of the Air Force Personnel Council*, paragraph 3.2.4, the DRB is not an investigative body and presumes that all government affairs are conducted regularly and fairly, unless there is substantial credible evidence to overcome this presumption. The burden of proof lies with the Applicant to provide evidence that the discharge was not proper or equitable. Since the Applicant failed to provide any credible evidence to support their claims, the DRB determined that the discharge was proper and equitable, and that there was no basis for further relief.

**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 boxes for "PTSD," "other mental health," and "sexual assault/harassment" on the application. The Applicant contended they experienced and unwanted sexual encounter during their time in service and sought mental health services.*

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

*A review of the Applicant's in service records revealed the Applicant received mental health services during their time in service for symptoms of depressed mood, binge eating patterns, lethargy, and stress related to being in trouble with their leadership and under investigation on multiple occasions. There is no evidence the Applicant received the diagnosis of PTSD during her time in service. The Applicant's records revealed the Applicant received the diagnoses, in-service, of persistent depressive disorder, binge eating disorder, and personality disorder traits.*

*The Applicant contended they experienced an unwanted sexual encounter during their time in service but did not report it. A review of the applicant's medical and mental health records revealed the Applicant was asked explicitly about experiences of sexual assault during medical and mental health visits and the Applicant denied any experiences but did endorse a history of childhood sexual abuse.*

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 four years, nine days time in service.*

*A review of the Applicant's discharge package revealed the Applicant was discharge due to wrongful use of marijuana, open container of alcohol in a vehicle, and violation of restriction of movement order.*

*The Applicant's testimony is contradictory to the Applicant's in-service records. The Applicant stated in their testimony that they received "paperwork once every work week cycle." There is no evidence the Applicant document disciplinary action weekly. The Applicant's mental health records revealed the Applicant's primary symptoms were excessive sleeping, depressed mood, and feelings of loneliness and isolation. The Applicant's testimony revealed they were drinking excessively and "was always surrounding myself with those who wanted to drink and party." A review of the Applicant's records revealed the Applicant denied knowingly using THC products and believed the products they were smoking to be a non-prohibited hemp CBD product, which they claimed to be using to reduce their nicotine use. There is no evidence of a nexus between the Applicant's contended unknown use of prohibited products and their in-service mental health conditions and experiences of sexual assault/harassment.*

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

*There is no evidence of nexus between the Applicant's contended unknown use of prohibited products and their in-service mental health conditions and experiences of sexual assault/harassment. Because the Applicant's discharge is not mitigated or excused by the Applicant's mental health condition or experience of unwanted sexual encounter, the Applicant 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.

**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 Honorable Conditions (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 25 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)

