

SUMMARY: The Applicant was discharged on 09 June 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, a change to the discharge narrative reason, a change to the reentry code, 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 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 marijuana and delta-8-tetrahydrocannabinol
- Article 15 for wrongful use of delta-8-tetrahydrocannabinol

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 in all aspects of their discharge. They were regretful in their decision to use THC as a method to cope with their mental health challenges. They stated prior to the incident resulting in their discharge, they had never experimented with drugs but thought it was their only option to overcome their mental issues. After separating from the military, they sought-out assistance from the Veteran's Affairs (VA) to understand the mental issues they struggled with. The Applicant submitted their VA benefit verification and disability breakdown letter claiming they struggled with major depressive disorder, panic disorder, and traumatic brain injuries.

The DRB determined there was no evidence, based on the available records to the support the Applicant's request to upgrade all aspects of their discharge. It was revealed the Applicant denied any mental health symptoms and never sought or received any mental health treatment during their time in service. The Applicant was aware of services and resources available to assist them with their symptoms of anxiety but willfully chose to use prohibited substances. The Applicant tested positive for use of delta-8 THC on two separate occasions which resulted in their discharge. The Applicant's administrative records indicated the Applicant's commander reviewed their entire military record but could not overlook the positive urinalysis test for delta-8 THC and marijuana. Given the reliance on the presumption of regularity, the Board determined that the Applicant's discharge was appropriate. Regarding the Applicant's concurrence with their VA rating, the Department of Veteran's Affairs, operating under a different set of laws than the military, is

empowered to offer compensation for any medical 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.

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 checked the boxes for "PTSD," "TBI" and "other mental health" on the application. The Applicant contended "I regret my decision to use THC to cope with my mental health challenges. After my separation I sought out the VA for assistance in understanding the mental issues I struggled with. After the evaluations I found that I was struggling with a major depressive disorder, panic disorder, and traumatic brain injuries." The Applicant also contended "Prior to this incident I had never experimented with drug use, but I felt at the time of the incident this was my only option to overcome my mental issues I was experiencing. The evidence will show you that this was out of character for my service and provide insights to the mental health issues that I still grapple with today."

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

There is no evidence the Applicant sought or received any mental health treatment during their time in service. There is evidence the Applicant was command referred to ADAPT during their time in service due to a positive urinalysis and bickel test for a THC derivative at which time the Applicant reported they were using prohibited substances for symptoms of anxiety. There is no evidence the Applicant received the diagnosis of PTSD during their time in service. There is no evidence the Applicant endorsed or exhibited any clinically significant indicators of PTSD during their time in service. A review of the Applicant's mental health assessments and post deployment assessment did not reveal any endorsements or indicators of a mental health condition. The Applicant checked the box for "TBI" on the application. A review of the Applicant's in service medical records revealed the Applicant sustained a broken jaw during a fight at a bar. The Applicant's records revealed the Applicant denied any sequelae from the injury and denied any mental health symptoms as a result of this experience during their 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 four years, nine months twenty-five days time in service. The Applicant's records revealed the Applicant tested positive for THC derivatives on two occasions at progressively higher levels. The Applicant indicated in their response to discharge notification that they were using THC products to deal with anxiety because they did not want to be placed on a profile. A review of the Applicant's medical records revealed the Applicant was aware of services and resources available to assist them with their symptoms of anxiety but willfully chose to use prohibited substances. The Applicant

