

SUMMARY: The Applicant was discharged on 19 December 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Honorable Conditions (General) character of service for Misconduct (Drug Abuse). The Applicant appealed for an upgrade of their character of service, a change to the narrative reason for separation, and a change to the reentry code.

The Applicant requested the Board be completed based on a records-only review. The Board was conducted on 31 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 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:

-Article 15 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 contended a false positive on their drug test abruptly ended their career.

The Applicant provided the following documents in support of their claim: DD214; Character Upgrade Request; Character Letters; VA Medical Record; Article 15 Response; Positive Test Results; Supporting Evidence for False Positive.

The Applicant was discharged for wrongful use of marijuana after testing positive for cannabinoids (THC9) at a level of 23 ng/ml (Cut off level is 15 ng/ml).

The DRB found insufficient evidence of an error in their positive urinalysis test and found no evidence of a mental health condition that mitigates or excuses the Applicant's misconduct. The Board determined the discharge was proper and 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?

The Applicant contends that they never used marijuana and that their positive urinalysis was the result of secondhand exposure. Due to drug abuse allegations against them and the punishment, they have battled feelings of depression and shame. In their response to the Article 15, the Applicant noted that they were occasionally around frequent users at the time of use, some of them were family members, friends and significant others. The Applicant believed that if they did not participate in smoking, they were protecting themselves from its adverse effects. No mental health condition was implicated as cause of misconduct or discharge.

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

The record showed that the Applicant was diagnosed and treated for depressive symptoms prior to and after the misconduct. The Applicant checked the other mental health box on their application; however, did not implicate a Mental Health (MH) condition in their contention as the cause of their misconduct. The Applicant denied the misconduct of smoking marijuana but believed the positive urinalysis for marijuana was a false-positive that perhaps reflected their exposure to the substance while in the company of another or others who used it. There was no evidence in the record that documented their MH condition led to use of marijuana and the Applicant did not make such a claim.

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

The Applicant denied the use of marijuana; thus, they did not claim a mental health condition or mental health symptoms as cause of the misconduct. Therefore, it is not possible to associate any mental health condition as an excuse or mitigating factor in the misconduct.

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

There is no mental health condition that excused or mitigated the misconduct and there is no condition or experience that outweighs the discharge.

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 character of

service, to change the narrative reason for separation, and to change the reentry code.

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 character 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 28 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)