

SUMMARY: The Applicant was discharged on 4 August 2010 with a Bad Conduct Discharge after being convicted of possession and use of marijuana, cocaine, and attempted wrongful use of psilocybin mushrooms, and introducing marijuana onto a military installation during a Special Court-Martial.

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 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:

-Special Court Martial.

CHARGE: Article 112a. Plea: G. Finding: G.

Specification 1: Wrongfully possess some amount of cocaine. Plea: G. Finding: G.

Specification 2: Wrongfully use cocaine. Plea: G. Finding: G.

Specification 3: Wrongfully possess some amount of marijuana. Plea: G. Finding: G.

Specification 4: Wrongfully use marijuana. Plea: G. Finding: G.

Specification 5: Wrongfully use psilocybin mushrooms, a Schedule I controlled substance. Plea: G.

Finding: NG, but G of the lesser-included offense of attempted wrongful use of psilocybin mushrooms, a Schedule I controlled substance.

Specification 6: Wrongfully introducing some marijuana, onto an installation used by the armed forces.

Plea: G. Finding: G.

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 contends that their discharge should be reviewed under liberal consideration as their mental health (MH) conditions, including attention-deficit hyperactivity disorder (ADHD), anxiety disorder, and dysthymic disorder (depression), which existed during their military service and contributed to their misconduct. The Applicant also argues that their mental health conditions and experiences excuse or mitigate their discharge and outweigh the charges leading to their discharge, which were non-violent, individual drug possession charges. Furthermore, the Applicant contends that they should be granted a discharge upgrade on grounds of equity, justice, and clemency and based on the totality of their life and circumstances, including their years of high-quality service prior to their discharge and their good character and conduct since their discharge.

The Applicant provided the following documents in support of their claim: High School Drop Out Request Form; Pre-Military Achievement Certificates; Letters of Appreciation; Personal Statement; Character References; Military Service History; VA Claims File.

The Applicant was discharged with a Bad Conduct Discharge and in accordance with DAFI 36-2023, *The Secretary of the Air Force Personnel Council*, the Board shall only consider clemency as a basis to grant relief specifically from a criminal sentence and is a part of the broad authority that the DRB has to ensure fundamental fairness. The Board found insufficient evidence to provide the Applicant an upgrade based on clemency.

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 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 of other mental health, sexual assault/harassment and Don't Ask Don't Tell (DADT). In their letter to the Board, the Applicant stated they were targeted by heterosexual coworkers "who made determinations based on how I responded to what I perceived as misogynistic and unprofessional conduct." They regularly heard "cruel rumors spread around about myself and other suspected gay airmen." The Applicant stated they spent time trying to relay how they felt and found coping mechanisms via mental health units and otherwise. The Applicant experienced depression, anxiety, panic attacks and suicidal ideations. Neither counsel or Applicant specifically drew a nexus between Applicant's illicit drug use and mental health condition.

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

The Applicant was treated for the condition of ADHD and dysthymia. There was no report of a sexual assault/harassment documented in the treatment record. There was no evidence of a complaint against coworkers targeting the Applicant. The Applicant received overall performance ratings of above average performance and indicated they concurred with their ratings. There was no evidence of significant anxiety, mood disorder, panic attacks or suicidal ideation in the year prior to separation. The record documented "history of intense suicidal ideation about a year ago," (2007), and the 2007 evaluation of performance rated them favorably, showing performance exceeding acceptable level and was promotable. The record

also documented the Applicant denied mood and anxiety symptoms in the year prior to separation. However, after the misconduct, they were assessed with adjustment disorder with mixed emotional features, cocaine abuse, cannabis abuse, and ADHD.

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

The record indicated that the Applicant continued to use marijuana post-discharge despite having been prescribed medication to treat their MH condition. The Applicant stated during their visit to the medical clinic that they knowingly used illicit drugs to self-medicate their ADHD symptoms, and because they were hanging out with the wrong crowd. Cocaine is an illicit substance of great abuse potential and has no role in treating any MH condition. The Applicant stated that they were trying to self-medicate is not meritorious given that the record showed they received substantial benefit from their prescribed medication and made no effort to obtain a refill while on leave. At the time of the misconduct, the Applicant had been taking the stimulant medication for three years and had a good response. There was no evidence of impaired job performance. The Applicant's evaluations indicated their overall performance was above average. The Applicant provided a pre-service history of ADHD symptoms and had no report of being prescribed medication to treat ADHD or using illicit drugs to treat their symptoms. The use of marijuana to treat mood or anxiety symptoms is not uncommon; however, there was no evidence of a mood or anxiety diagnosis in the year prior to the misconduct although the Applicant had been evaluated many times allowing ample time to assess a mood disorder, given they had a history of dysthymia the year prior. In conclusion, there is no evidence that any mental health condition excuses or mitigates the discharge.

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

The Applicant's mental health condition does not excuse or mitigate their discharge and does not outweigh the original discharge. There was no error or injustice identified with the Applicant's discharge process from service.

FINDING: The DRB voted unanimously to *deny* the Applicant's request to upgrade their character of service or to change the narrative reason for separation.

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 "Bad Conduct Discharge," the narrative reason for separation shall remain "Court Martial (Other)," and the reentry code shall remain "2L." 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)