

SUMMARY: The Applicant was discharged on 27 July 2021 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an 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 26 November 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 the wrongful use of marijuana as scheduled I controlled substance.

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 the Board's consideration for a discharge upgrade, asserting that their discharge was inequitable as it stemmed from a single isolated incident during 41 months of otherwise honorable service with no other adverse actions. They stated that the incident involved the inadvertent consumption of an illegal substance, which impacted their eligibility for educational benefits—a consequence they deeply regretted.

Despite significant mental health challenges that led to their VA disability status, the Applicant demonstrated resilience by achieving professional milestones, including earning a Series 65 license and a Life and Health Insurance Provider license. As a financial advisor managing millions in client assets, they took pride in the trust placed in them, reflecting their transformation into a responsible member of society.

Upon recently learning they would become a parent, the Applicant expressed a strong desire to provide their child with better opportunities and humbly sought the Board's support in alleviating financial burdens to secure a stable future for their growing family.

The DRB determined that the Applicant's discharge for the wrongful use of marijuana, which violated the Air Force's zero-tolerance policy, was appropriate. The Applicant had signed Air Force Form 2030, acknowledging this policy, and tested positive for THC in a urine analysis. While the Applicant claimed the consumption was inadvertent, no evidence beyond their statement supported this claim. Additionally, the Applicant's cited depression and anxiety were documented to have developed after the positive test and investigation, with no evidence linking these conditions to the drug use.

The Board acknowledged the Applicant's post-service accomplishments, including professional certifications and a stable career, as commendable. However, these achievements did not outweigh the seriousness of the misconduct or provide sufficient grounds to justify an upgrade in the discharge characterization. No inequity, impropriety, or mitigating circumstances were identified.

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 marked "OTHER MENTAL HEALTH" on their application to the DRB and contended that their discharge was inequitable because it was based on one isolated incident within 41 months of service with no other adverse actions. The incident involved the inadvertent consumption of an illegal substance that affected their eligibility for education benefits. They expressed regret for their mistake, which had significant repercussions on their life.

The Applicant discussed their post-service accomplishments and stated they were motivated to secure a stable future for their growing family. While they did not identify their "other mental health" condition, they submitted letters from the VA indicating they had been service-connected for unspecified depressive disorder with anxiety, with an evaluation of 50%. The rationale for their mental health condition and service connection was not provided in the letters.

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

There is evidence that the Applicant reported experiencing anxiety and depressive symptoms during their service. However, according to their service treatment records, these symptoms began after they tested positive for marijuana/THC and were under investigation. Prior to these events, they were seen at the Mental Health Clinic (MHC) for complaints of inattention, concentration, and impulsivity problems, which they associated with ADHD, a condition they reported dating back to childhood.

The Applicant was never diagnosed with a depressive or anxiety disorder during service. They were given a

"rule out" diagnosis for ADHD, indicating that there were insufficient symptoms at the time to confirm the diagnosis. Further evaluation was recommended to rule out or confirm ADHD, but this evaluation was never completed, likely because the Applicant was focused on addressing other immediate stressors. The Applicant was given a condition, not a diagnosis, of "Other Problems Related to Employment," attributed to the legal and occupational challenges stemming from their drug use. This condition was noted as potentially influencing the diagnosis, course, prognosis, or treatment of their mental health symptoms.

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

The Applicant had submitted a response to his discharge action on 29 June 2021 and reported that he did not why he tested positive for a substance and claimed he did not knowingly use marijuana. He denied abusing drugs. He echoed a similar account to his mental health provider during a session on 27 May 2021 when he reported unknowingly consuming anything with THIC in it and speculated it was in a baked good eaten at a party. The Applicant also contended in this petition that the incident involved inadvertent consumption. His reports have been consistent. Since he unknowingly consumed THC, then it is not possible he used or consumed marijuana/THC to cope with his mental health condition. He reported he was at a party at the time of consumption and there is no evidence he was in emotional distress at the time that would impair his judgment to inadvertently use drugs. There is no evidence he had a mental health condition including depression, anxiety, or ADHD at the time he ingested THC or preceding this event as evidenced by his numerous PHAs and PDHAs reporting he denied having any mental health issues. To reiterate, his depression and anxiety were the result of his positive UA and its consequence of being under investigation and subsequent administrative discharge. It is acknowledged that he had been service-connected by the VA for unspecified depressive disorder with anxiety, but receiving service connection does not indicate causation of the misconduct but merely suggests the condition was somehow related to his military service and not necessarily the cause of his discharge. There is no evidence his mental health condition had a direct impact or was a contributing factor to his marijuana use and discharge. Therefore, his mental health condition does not excuse or mitigate his discharge.

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

Since the Applicant's mental health condition does not excuse or mitigate their discharge, it also does not outweigh their original discharge. There is no inequity or impropriety identified with their discharge from a mental health perspective

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.

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 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 27 December 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 20762-6435

Instructions on how to appeal an AFDRB decision can be found at
<https://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)