

**SUMMARY:** The Applicant was discharged on 04 December 2019 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General discharge for Misconduct (Drug Abuse). The Applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason and associated separation code, 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 23 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 Applicant's record of service included the following documented misconduct leading up to their discharge: 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.

Through counsel, the Applicant contended his discharge was both inequitable and improper. Counsel argued the Applicant was accused of using marijuana with two other Airmen. Further, counsel argued the allegations were made without corroborating evidence and were fabricated by one of the Airmen to mitigate his own culpability after being caught using marijuana. The Applicant was offered Nonjudicial Punishment (NJP) under Article 15, UCMJ, which he declined, and demanded trial by court-martial. Instead, the command issued the Applicant a Letter of Reprimand. The Applicant continued to deny the allegation and had substantial evidence to refute the claim. Despite the Applicant's turn down of the NJP, and his request to present his case at a court-martial, the command recommended discharge for drug use based solely on the uncorroborated statement of the Airman and disregarded the Applicant's evidence to the contrary.

A review of the Applicant's record revealed a fellow Airman implicated the Applicant in the use of a controlled substance – Marijuana. The fellow Airman tested positive via urinalysis testing, was questioned by the Office of Special Investigations (OSI), and named several other Airman in his written statement. Based upon the fellow Airman's statement, the Applicant was offered NJP for a violation of Article 112(a) UCMJ – Marijuana Use. The Applicant declined the NJP and demanded trial by court-martial. The Commander then issued a Letter of Reprimand (LOR) for the drug use to the Applicant and subsequently initiated an administrative separation action for drug abuse.

The Applicant launched a robust defense to the administrative separation action and vehemently denied marijuana use both before or during his military service. Multiple fellow Airmen and NCOs provided

character statements on behalf of the Applicant and his Defense Counsel provided a written argument on his behalf. Additionally, the veracity of the initial accuser was questioned by a Senior NCO who stated the Airman had credibility issues on several occasions. There was no other evidence in the record corroborating the accusing Airman's written statement of the Applicant's marijuana use.

After a thorough review of the applicant's administrative separation action for drug abuse and the subsequent service characterization action, the DRB found both to be legally sufficient and proper practice. However, although switching from a judicial proceeding to an administrative proceeding is not improper in the military disciplinary arena, the DRB found the practice is not ideal or optimal. In the present case, the DRB has the discretion/authority to conduct a *De Novo* review of the case/evidence at hand. In conducting a review of the case from its inception at the NJP stand-point to conclusion with the administrative separation, the DRB concluded the Applicant likely would have prevailed in a court-martial proceeding as in all probability the evidence would not have met the burden of proof of *beyond a reasonable doubt*. The DRB opined the Applicant would have most certainly have testified to his innocence, and the accuser's veracity likely would have been called into question as the evidence suggested. Thus, if a court-martial had proceeded as the Applicant expected at the declination of the NJP action, this Board believes it just as likely as it is not that he would have prevailed. Since the administrative proceeding was initiated, the burden of proof is lower, and the Applicant's due process rights were limited. Therefore, based on the facts of this case, the DRB found the Applicant's discharge was inequitable.

**FINDING:** The DRB voted unanimously to *approve* the Applicant's request to upgrade their discharge characterization, to change the discharge narrative reason and associated separation code, and to change the reentry code.

**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 inequitable. Therefore, the awarded characterization of service shall change to "Honorable," the narrative reason for separation and associated separation code shall change to "Secretarial Authority," and the reentry code shall change to "3K." The DRB results were approved by the Presiding Officer on 12 November 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, NAF Washington, MD 20762-6602

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

Attachment:  
Examiner's Brief (Applicant Only)