

SUMMARY: The Applicant was discharged on 11 October 2019 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 21 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:

- 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.

The Applicant stated they were a victim of military negligence and Military Sexual Trauma (MST) which resulted in post-traumatic stress disorder (PTSD) and has profoundly impacted their mental and emotional well-being. Due to these circumstances, they requested their service characterization be upgraded to honorable to accurately represent their dedication and sacrifices they made while in the military despite the adversities they faced due to negligence and MST. They stated the upgrade will validate their service and provide them with the full benefits and recognition they feel they rightfully deserve. In addition, they believed the upgrade would alleviate some of the burdens and injustices they have carried because of the service characterization.

The DRB determined the Applicant's discharge was fair and equitable. A review of the Applicant's discharge package revealed the Applicant's peers made it known to investigators that the Applicant and their civilian boyfriend were known to use "weed pens" and the disciplinary action that resulted in the Applicant's discharge occurred after the Applicant chose to use THC at a social gathering in a hotel room in which several others also came under investigation for using THC vape pens. Further, the Applicant reported to providers that they willingly smoked marijuana with their friends while socializing at a party prior to PCS. The Applicant's use of marijuana was corroborated by multiple witness statements, including one that indicated that was not the first time the Applicant had used marijuana. The Applicant failed two urinalysis tests which resulted in a letter of reprimand (LOR) and ultimately led to their administrative discharge. There is no evidence the Applicant's decision to use THC was due to the Applicant's desire to self-medicate an underlying mental health condition or due to impacts from the Applicant's experience of sexual assault.

In support of their contentions, the Applicant provided a copy of their Veteran's Affairs compensation claim stating they were granted an evaluation percentage for PTSD due to MST and copies of character letters from 2019 that were reviewed by the separating authority according to their discharge package. 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 Applicant did not provide any evidence or testimony regarding the negligence in their contention. In addition, a direct correlation between their MST, mental health, and decision to willfully use drugs was not established. Per DAFI 36-2023, *Secretary of the Air Force Personnel Counsel*, paragraph 3.2.4 "The DRB is not an investigative body and presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence to overcome this presumption. The presumption of regularity dictates that, absent evidence to the contrary, commanders, supervisors, and other officials involved with an action acted fairly and in good faith. The Applicant bears the burden of providing evidence to overcome this presumption, and the board will only grant relief if it determines there is sufficient evidence to conclude the Applicant's discharge was not proper or equitable."

The DRB found that the Applicant failed to present substantial evidence to support their claims of an injustice or impropriety surrounding their discharge. Given the lack of substantial evidence and the fact that the Applicant's MST and mental health were already considered during their discharge, the DRB was unable to find any impropriety or inequity in the Applicant's discharge. As a result, the DRB denied the Applicant's request to upgrade their service characterization from "General" to "Honorable".

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" and "sexual assault/harassment" on the application. The Applicant contended "I was the victim of military negligence and Military Sexual Trauma (MST), and as a result, I suffer from severe Post-Traumatic Stress Disorder (PTSD). These traumatic experiences have

profoundly impacted my mental and emotional well-being. Due to these circumstances, I am requesting a correction of my service member records to reflect the true nature of my service and the injustices I endured. I am requesting that my character of service be upgraded from "Under Honorable Conditions- (General)" to "Honorable." This upgrade is necessary to accurately represent my dedication and the sacrifices I made during my time in the military, despite the adversities I faced due to negligence and MST. This correction will not only validate my service but will provide me with the full benefits and recognition I rightfully deserve. It will help to alleviate some of the burdens and injustices I have carried as a result of my service record not accurately reflecting my true service and the conditions under which it was rendered."

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

A review of the Applicant's records revealed the Applicant began receiving mental health services during their time in service subsequent to an argument with their boyfriend and continued receiving services after their experience of sexual assault and through their discharge. The Applicant's records revealed the Applicant reported their in-service experience of sexual assault to medical providers and to the SAPR office during their time in service and made an unrestricted report of sexual assault during their time in service. The Applicant's records revealed the Applicant endorsed symptoms of lack of sleep, intermittent low mood, anxiety and frustration related to her experience of sexual assault.

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

The Applicant contended "I was the victim of military negligence and Military Sexual Trauma (MST), and as a result, I suffer from severe Post-Traumatic Stress Disorder (PTSD). These traumatic experiences have profoundly impacted my mental and emotional well-being." The Applicant did not provide any clarifying testimony or evidence about the negligence they are referring or how the contended negligence caused or contributed to the Applicant's misconducts that led to their discharge. The Applicant did not provide any clarifying evidence or testimony regarding their contention of in-service MST or how this caused or contributed to the misconducts that led to their discharge.

A review of the Applicant's discharge package revealed the Applicant's peers made it known to investigators that the Applicant and their civilian boyfriend were known to use "weed pens" and the disciplinary action that resulted in the Applicant's discharge occurred after the Applicant chose to use THC at a social gathering in a hotel room in which several others also came under investigation for also using THC vape pens. A review of the Applicant's records revealed the Applicant reported to providers that they willingly smoked marijuana with their friends while socializing at a party prior to PCS. There is no evidence the Applicant's decision to use THC was due to the Applicant's desire to self-medicate an underlying mental health condition or due to impacts from the Applicant's experience of sexual assault. The Applicant provided no specific information, details, testimony, or evidence regarding their contention of "military negligence" or that contributed to the misconduct that led to the Applicant's discharge. The Applicant's records revealed the Applicant failed urine drug tests on multiple occasions for multiple classes of drugs upon coming under investigation. There is evidence the Applicant reported their in-service experience of sexual assault to medical providers and to the SAPR office and made an unrestricted report of sexual assault during their time in service. The Applicant's records revealed the Applicant received mental health services prior to and after their unrestricted report of sexual assault and was granted an expedited transfer in response to their report. There is no evidence of a mitigating nexus between the Applicant's choice to use drugs socially with their friends and boyfriend at a party and the Applicant's in-service experience of sexual assault.

The Applicant submitted their VA rating summary as evidence in support of their contentions. The Board noted the Applicant's post-service account of their in-service experiences is substantially different than the available in-service records. Regarding the Applicant's concurrence with their VA ratings, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health 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. At the "snapshot in time" of the Applicant's service, there is no evidence a mental health condition caused or mitigated the misconduct(s) that led to the Applicant's discharge.

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

The burden of proof is upon the Applicant to substantiate claims of inequity or impropriety. Because there is no evidence, based upon the evidence and records available for review, of a mitigating nexus between the Applicant's choice to use drugs socially with their friends and boyfriend at a party and the Applicant's in-service experience of sexual assault, the Applicant's discharge due to misconduct is not outweighed.

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.

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 26 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, 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)