

SUMMARY: The Applicant was discharged on 13 April 2010 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Under Other Than Honorable Conditions (UOTHC) discharge for Triable by Court-Martial. 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 16 January 2025. 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:

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 contend that their discharge was inequitable due to misconduct related to conditions of post-traumatic stress disorder (PTSD), sexual trauma, and behavioral mental health issues. They claimed that their discharge was based on a single isolated incident and stated that they were sexually assaulted during their service, which they did not report at the time. The Applicant reported experiencing trust issues, sleep disturbances, and anxiety attacks, for which they sought help from the mental health clinic, and was also deployed to Afghanistan, where they witnessed the transportation of fallen soldiers.

The DRB determined that their discharge from the United States Air Force was proper and equitable. The Applicant's military records reveal that their discharge was prompted by a positive urinalysis test for tetrahydrocannabinol (THC) in October 2009, with a concentration of 196 ng/ml, which exceeded the

Department of Defense's (DoD) positive cutoff threshold of 15 ng/ml. At the time of the positive test, the Applicant was receiving treatment for depression. The Applicant participated in an interview with Security Forces and AFOSI, during which they waived their rights, declined legal counsel, and provided a verbal and written statement regarding the allegations. The Applicant admitted that they had intentionally used marijuana in an attempt to be discharged from the Air Force, citing personal difficulties, including the death of their Non-Commissioned Officer in Charge and best friend, as well as their mother's illness. They disclosed a history of drug use prior to entering the military but failed to disclose this information on their entry-level paperwork which included a question about marijuana use. The Applicant requested an UOTHC discharge in lieu of court-martial which was approved. The discharge package noted at the time of misconduct, the Applicant did not have a mental disease or defect that caused them to lack substantial capacity either to appreciate the wrongfulness of the acts, or to conform to the law.

The Applicant contended they were suffering from PTSD and mental health issues but did not provide sufficient evidence to support their claims. 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." Due to this the DRB denied the Applicant's request to upgrade the service characterization.

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" "Other mental health" and "sexual assault/harassment" on the application. The Applicant contended "my discharge was inequitable due to misconduct related to conditions of PTSD, sexual trauma, and behavioral mental health issues that were overlooked/disregarded, and it was based on one isolated incident in the 92 month (7 years and 8 months) of service with no other adverse action."

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

A review of the Applicant's records revealed the Applicant received mental health services during their time in service and received the diagnosis of adjustment disorder related to symptoms of irritability, difficulty sleeping, and occupational stressors. There is no evidence the Applicant reported or endorsed any experiences of sexual assault during their time in service, congruent with the Applicant's testimony to the board that they did not report their in-service experience of sexual assault to anyone during their time in service. The Applicant stated in their testimony to the board that did experience sexual assault during their time in service but did not report it due to fear of mistreatment from their unit. The Applicant's records revealed at the time of the Applicant's discharge the Applicant reported they were doing well and denied

experiencing any mental health symptoms that were impairing their functioning.

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

A review of the Applicant's DD214 revealed the Applicant was discharged with an under other than honorable conditions character of service with narrative reason for separation of triable by court martial with seven years, eight months eight days time in service. A review of the Applicant's discharge package revealed the Applicant made it known to their leadership and to the discharge authorities that they knowingly and willfully used marijuana in an attempt to get discharged from the military to be near family members who were ill. The intent of liberal consideration generally does not apply to premeditated misconduct. There is no evidence the Applicant's choice to use marijuana had a nexus to the Applicant's in service mental health condition or in service experience of sexual assault.

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

Because the Applicant's discharge was not mitigated or excused by a mental health condition, the Applicant's discharge is also 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 Other Than Honorable Conditions (UOTHC)," the narrative reason for separation shall remain "Triable by Court-Martial," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 26 January 2025. 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)