

SUMMARY: The Applicant was discharged on 30 January 2024 in accordance with Department of the Air Force Instruction 36-3211, Military Separations, 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 a change to the reentry and separation codes.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 23 October 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 Applicant's record of service included the following documented misconduct leading up to their discharge: a Letter of Reprimand for wrongful use of psilocybin mushrooms.

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 contended that the Letter of Reprimand (LOR) he was issued for drug use ignored the rules of DAFI 36-2907, *Adverse Administrative Actions*, as it lacked a specific date of incident. Furthermore, the LOR lacked any attachments or investigation reports. Additionally, the commander's rationale to substantiate the LOR was not fair as he expected the applicant to discuss the situation with his leadership while still under investigation. The applicant also claimed his command violated multiple Military Rules of Evidence in regard to statements he made to his supervisor.

A review of the Applicant's record revealed he disclosed to his supervisor that he had used psilocybin mushrooms with his partner. At the time of the disclosure, the Applicant was at a medical facility, and according to him, was in an inebriated state of anxiety, as he waited the results of HIV testing after exposure to an HIV person. The Applicant was subsequently ordered to provide a urine sample for drug testing, which results were negative. From the available evidence, the Board concluded the command found by a preponderance of the evidence that the Applicant engaged in wrongful use of psilocybin mushrooms, a Schedule 1 controlled substance. IAW DAFI 36-2907, para. 2.2., preponderance of the evidence is the standard of proof for adverse administrative actions. Meaning it is more likely than not that a fact exists. It is based on the totality of the circumstances, the inherent probability or improbability of the evidence, and a determination as to the weight and significance of the evidence and the credibility of the witnesses. The command found the supervisor's statements more credible than the applicant's and there was a legally sufficient basis for discharge under DAFI 36-3211.

The Applicant further claimed multiple violations of Military Rules of Evidence (MRE) which are not applicable to his contention as these rules only apply to court-martial proceedings, not administrative discharge proceedings. The Board noted the Applicant submitted 120 pages of documents with his application, including excerpts of the MREs, character reference letters, and letters to congress. With the exception of the letters to congress, the Board concluded this information was previously considered by the command during the Applicant's discharge processing.

Finally, the Applicant contended the command violated procedures in DAFI 36-2907 when issuing him the LOR. After thorough review, the Board noted, the reasons for the action, included a description of the Applicant's misconduct, and did cite specific incidents and dates. Therefore, the Board determined the command followed established guidance in issuing the LOR to the applicant and concluded the negative aspects of the Applicant's service outweighed the positive contributions he made during his Air Force career.

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, to change the discharge narrative reason, and to change the reentry code.

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, the narrative reason for separation shall remain, and the reentry and separation codes shall remain. The DRB results were approved by the Presiding Officer on 29 October 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)