

SUMMARY: The Applicant was discharged on 19 February 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 separation 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 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: an Article 15 for wrongful ingestion of Delta-8 Tetrahydrocannabinol (THC).

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 her positive urinalysis for THC-8 was a result of unknowingly ingesting hemp seeds in smoothies she consumed from an on-base establishment. She claimed the decision to discharge her was influenced by old photos and "tweets" from a hacked online social media account from 2018, prior to joining the military. She further claimed that it was unfair to judge her current character based on a mistake made six years ago, and similar cases have received favorable outcomes. Therefore, aligning her discharge with these precedents ensures fairness and consistency.

A review of the Applicant's record revealed that she was punished under Article 15, UCMJ for wrongful ingestion of THC. According to the available evidence in the record, the Applicant had a total of four positive urinalysis tests in a two month time period. The Applicant submitted a letter from her detailed Area Defense Counsel (ADC) with her application appealing the discharge. The ADC asserted new evidence was provided to the Applicant's command after she had already provided her response to the Article 15, and that the evidence was not provided to the Applicant, nor was she given the opportunity to respond to it. The ADC indicated the new evidence was pre-service social media posts which referenced drug use. The ADC also asserted the command had initially planned to request a retention waiver for the Applicant until this new evidence was received.

After a thorough review of all the evidence, and the Applicant's contentions, the DRB found no corroborating evidence to suggest that the Applicant's due process rights were violated as suggested by her ADC. Furthermore, according to the administrative discharge notification memorandum, the command

found the Applicant was ineligible for retention criteria based on reoccurring incidents of drug use. Therefore, the DRB found the Applicant's contentions without merit and her discharge was appropriate.

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. Specifically, during the administrative discharge process, the Applicant originally claimed she unknowingly ingested THC through a vape device. In her application, she claimed she unknowingly ingested it through a smoothie beverage(s) purchased on-base, calling her candor into question.

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 separation code. The DRB also voted unanimously to **deny** changing 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 code 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://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)