

SUMMARY: The Applicant was discharged on 21 April 2024 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Misconduct (Minor Infractions). The Applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The Applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 22 August 2024. Witnesses were present to testify on the Applicant's behalf.

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:

- Article 15 for disobeying a no contact order
- Letter of Reprimand for engaging in an adulterous relationship

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 had requested an upgrade to an Honorable discharge and a change in the narrative reason for separation, asserting that her discharge was inequitable due to PTSD stemming from Military Sexual Trauma (MST), which had contributed to her misconduct. She reported enduring repeated sexual harassment and one instance of assault during her service, which led to dissociation and poor decisions, including involvement with an Airman who made her feel safe. She claimed she had adhered to a no-contact order issued after the Airman's ex-wife reported the affair until the divorce was finalized and believed that under current DoD guidance, the outcome might have been different. In her personal statement, she acknowledged a lapse in judgment due to being blinded by love, expressed regret, and highlighted her growth through hard work and better choices. Since discharge, she had earned certifications as a personal trainer and emergency medical technician, received a scholarship for further education, and continued mental health treatment since May 2023. She became a mother, expressed a desire to purchase a home using a VA loan, and submitted character statements supporting her good character and work ethic.

The DRB acknowledged that the Applicant's service was impacted by a toxic environment, including sexual harassment and an incident of sexual assault, which likely contributed to her mental health issues and misconduct. However, the Board noted inconsistencies between the Applicant's current claims and her previous admissions, including her acknowledgment of violating the no-contact order, and determined that the Applicant's actions—repeatedly violating the no-contact order and engaging in an adulterous

relationship—were deliberate and willful. The initial no-contact order was issued to prevent further interaction with a married individual, especially after their ex-spouse reported the affair. Despite this lawful directive, the Applicant continued the relationship, claiming they felt safe in the midst of a toxic environment, which constituted misconduct under military regulations. After the initial violation, a second no-contact order was reportedly issued, which the Applicant also violated. They argued they were unaware of the second order, believing the initial order had expired, and claimed there was no documentation of its extension. However, military records, including Article 15 proceedings, confirmed the issuance of the second order, and the Applicant failed to comply. While the Board recognized the Applicant's personal challenges, it concluded that their repeated disobedience of direct orders showed a disregard for military discipline and could not be fully excused by their mental health conditions.

LIBERAL CONSIDERATION: The Board considered the Under Secretary of Defense memorandum, *Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records (BCMRs/BCNR) by Veterans Claiming Post Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI)*, dated 24 February 2016, commonly known as the “Carson Memo.” Specifically, cases considered previously, but without benefit of the application of the Liberal Consideration, shall be, upon petition, granted a de novo review utilizing the Supplemental Guidance. The Board found that it did not apply Liberal Consideration when it considered the case previously; therefore, the Board determined the case was eligible for de novo review, incorporating the Supplemental Guidance.

In applying liberal consideration in line with DoD guidance, the Board found the Applicant's PTSD diagnosis relevant but not sufficient to fully mitigate the severity and frequency of her misconduct. The Board recognized her positive post-service efforts, such as further education, certifications, and continued mental health treatment, which supported the change in her discharge narrative reason. However, these factors did not justify upgrading her discharge characterization or changing the reentry code. The narrative reason was adjusted to reflect her service circumstances and the toxic environment, but the original discharge characterization and reentry code were upheld to maintain military standards while acknowledging mitigating factors.

Due to 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, through counsel, contended the “Applicant's current discharge is inequitable because her PTSD due to MST contributed to the misconduct for which she was discharged”
2. Did that condition exist/experience occur during military service?
The Applicant, through counsel, contended the Applicant experienced military sexual trauma and PTSD during her time in service.

The Board concurs with the rationale of the personal appearance that there is no evidence the Applicant received any mental health services during her time in service. There is no evidence the Applicant received a diagnosis of PTSD during her time in service. There is no evidence or records the Applicant exhibited any clinically significant indicators of PTSD, or any mental health condition, during her time in service. In the notice of administrative discharge, there is evidence the Applicant's mental health was considered at the time of discharge in the Commander's statement reflected in the discharge package "There is no indication that [the Applicant's] misconduct is a result of post-traumatic stress disorder or traumatic brain injury."

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

A review of the Applicant's records revealed the Applicant was discharged due to misconduct, minor infractions.

In a review of the Applicant's records only request to the Board the Applicant stated "I by no means condone the choices I made leading up to my discharge. I have grown to see how silly and irresponsibly they were. I should have never aloud [sp] my feelings and emotions to effect my work or military service. I was blinded by what I thought was love."

The Applicant, through counsel, contended "fellow airmen, including her superiors, sexually assaulted and sexually harassed her on an almost constant basis throughout her service, while on and off duty." The Applicant, through counsel, contended the Applicant experienced sexual assault while stationed at Shaw AFB and at a house party she was forced against a wall and kissed by another airman in front of others. The Applicant, through counsel, contended she reported sexual assault to her superiors, but no action was taken. The Applicant reported during her personal appearance that she did not report the assault but clarified that she talked to a friend of higher rank about the incident and decided not to report the incident after the conversation. No new, additional evidence or testimony was presented regarding these events during the personal appearance or remand appearance.

The personal appearance board noted that a review of the Applicant's records revealed the Applicant reported to post-service providers a history of pre-service sexual trauma. The Applicant, through counsel, submitted a signed letter stating the Applicant did not experience pre-service physical or sexual violence. A review of the Applicant's post service records revealed the Applicant reported to post service medical providers an extensive history of witnessing physical abuse and experiencing physical and sexual abuse as a child. When asked directly by the Board psychologist about the Applicant's history of pre-service of sexual trauma during the Applicant's initial personal appearance hearing, the Applicant's counsel stated they were unaware of pre-service sexual trauma and the Applicant's witness psychologist did not comment on the Applicant's time prior to service during her initial personal appearance testimony and stated the Applicant denied a pre-service history of physical or sexual abuse. The Applicant's records revealed the Applicant denied any in-service history or experiences of sexual assault/abuse and also denied any symptoms of PTSD to multiple providers across the span of her military career when asked directly until 2022, when she was informed by the Applicant's provided psychologist that she had given the Applicant a diagnosis of PTSD.

The records revealed no symptoms of PTSD endorsed throughout the Applicant's military career, to any PCM, Gynecology provider, mental health provider, optometrist, or medical specialist. As opined by the previous board in the initial personal appearance, it is possible that the Applicant experienced military sexual assault and harassment; however, the burden of proof is placed upon the Applicant to substantiate these claims. The Applicant's witness psychologists opined the Applicant had Acute Stress Disorder and PTSD during her time in service from her experience of sexual harassment and sexual assaults. The witness psychologist is unable to render an opinion of the Applicant during the "snapshot in time" of the Applicant's service as the witness psychologist was not the Applicant's treating provider at any time during the Applicant's time in service. Based on the available records and testimony provided, it is as likely as not the mental health symptoms detailed by the Applicant's witness psychologist developed post service, as she was

evaluated eight years post discharge. There is no evidence the Applicant was diagnosed with or exhibited clinically significant indicators of a mental health condition during her time in service. There is no evidence a mental health condition or experience of sexual assault or sexual harassment caused or mitigated the misconduct(s) that led to the Applicant's discharge.

4. Does that condition or experience outweigh the discharge?

Because the Applicant's discharge is not mitigated, it is also not outweighed. There is evidence the Applicant's command considered the Applicant's mental health at the time of discharge. In the notice of administrative discharge, the Applicant's Commander stated "There is no indication that [the Applicant's] misconduct is a result of post-traumatic stress disorder or traumatic brain injury."

Further, the Board noted counsel's supplemental filing document to the Board disagreeing with board's two previous decisions and again requesting that liberal consideration be applied to the Applicant's request. Liberal consideration does not mandate an upgrade. Further, liberally considering the circumstances, evidence, and testimony along with an advisory opinion from a Department of Defense mental health physician or psychologist with an assessment of the in-service presence of mental health conditions or experiences of sexual assault or sexual harassment and any potentially mitigating factors relating to the basis for discharge is the application of liberal consideration. A review of the previous decision rationale provided to the Applicant revealed the previous personal appearance hearing applied liberal consideration and included a summary of both Kurta and Wilkie analyses.

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.

FINDING: The DRB unanimously voted to approve the Applicant's request to change the discharge narrative reason. However, the Board also unanimously voted to deny the Applicant's requests to upgrade their discharge characterization and to change the reentry code.

Should the Applicant wish to appeal this decision, the Applicant must seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

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 some inequities in the discharge. Therefore, the narrative reason for separation shall change to "Secretarial Authority," the awarded characterization of service shall remain "General," and the reentry code shall remain "2B." The Air Force DRB results were approved by the Presiding Officer on 17 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, MD 20762

Instructions on how to appeal an AFDRB decision can be found at

<https://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)