

**SUMMARY:** The Applicant was discharged on 08 October 2021 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions for Misconduct (Serious Offense). 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 requested the Board be completed based on a records only review. The Board was conducted on 13 December 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 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's counsel highlighted their positive conduct, including early promotion and other commendable behavior. They noted that the Applicant was medically retired on 27 June 2021, with a 70% disability rating due to mental instability. However, financial struggles had led the Applicant to apply for disability benefits while still on active duty. An investigation revealed they had also received unemployment assistance while employed full-time, resulting in a Letter of Reprimand and the initiation of an Other Than Honorable discharge.

The Applicant also faced federal charges for unlawfully receiving pandemic relief benefits. Advised by their criminal attorney, the Applicant waived their right to contest the separation to avoid self-incrimination. Counsel argued that the Applicant was penalized twice: through incarceration and the loss of disability retirement benefits. Since their incarceration, the Applicant has participated in therapy and enrolled in drug and alcohol rehabilitation programs.

The Applicant provided the following documents in support of their claim:

EB package  
PED package  
Board Notification  
Unconditional Waiver  
Disability Retirement Orders

The DRB determined that the Applicant engaged in deliberate and significant misconduct, including unlawfully obtaining over \$26,000 in pandemic unemployment assistance while employed full-time and facing federal charges for fraudulently receiving pandemic relief benefits. The Applicant waived the right to contest their separation to avoid self-incrimination, reflecting their awareness of the severity of their actions. Given the premeditated nature of the misconduct and its prolonged duration, the Board concluded that liberal consideration did not apply in this case.

While the Applicant cited mental health conditions, including anxiety, insomnia, and a civilian diagnosis of bipolar II disorder, military providers did not concur with the diagnosis, and evidence suggested inconsistent reporting and treatment compliance. Post-service rehabilitation efforts, such as therapy and substance abuse programs, were noted but did not outweigh the gravity of the Applicant's intentional misconduct. By submitting an unconditional waiver, the Applicant demonstrated an understanding of the consequences of their actions, supporting the Board's decision to uphold the characterization of service as under other than honorable conditions.

**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 "other mental health" on the application. The Applicant did not make any contentions on the signed application submitted to the Board; however, the Applicant has submitted multiple unsigned applications to the Board in recent years contending in summary that his discharge was inequitable because he did not present evidence of his mental health condition at the time of his discharge because he was under concurrent criminal investigation and was advised not to provide matters on his behalf.*

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

*A review of the Applicant's in-service records revealed the Applicant began seeking mental health treatment at the same time his records revealed he began receiving unauthorized financial compensation. The Applicant reported symptoms of insomnia and anxiety during his time in service and reported seeing an off-base provider who diagnosed the Applicant with bipolar II disorder. The Applicant's records revealed the military mental health providers did not concur with this diagnosis and a review of the Applicant's records*

*revealed the Applicant report of symptoms and impacts was inconsistent and likely related to seeking secondary gain. The Applicant's records revealed the Applicant was intermittently medication or treatment compliant during his time in service and was an unreliable historian but was focused on his medical evaluation board process and routinely provided misleading information to medical and mental health providers to advance his medical evaluation board. There is no evidence the Applicant received the diagnosis of PTSD during his time in service. There is no evidence or records the Applicant exhibited or endorsed any clinically significant indicators of PTSD during his time in service. The Applicant's records are unclear as to how or why the Applicant was referred to a medical evaluation board during his time in service as the Applicant's leadership and mental health providers did not find the Applicant's mental health symptoms to impair his ability to perform his duties and noting inconsistencies in his symptomology and treatment compliance.*

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

*A review of the Applicant's DD214 revealed the Applicant was discharge with an under other than honorable conditions character of service due to misconduct (serious offense) with five years, five months, six days time in service. At the time of the Applicant's discharge, the Applicant was found to have wrongfully obtained more than \$26,000 in pandemic unemployment assistance and related monetary benefits and noted to mental health providers he was under investigation for other federal crimes. A review of the Applicant's response to discharge notification revealed the Applicant understood the discharge process, the characterization, and waived his right to submit statements on his behalf. There is no evidence the Applicant did not understand the discharge process or characterization. At the time of the Applicant's discharge, the Applicant's records revealed he stopped all mental health engagement for nearly a year, and was not reporting any functional impairments due to mental health condition.*

*A review of the Applicant's records revealed the Applicant's mental health condition was known and considered by the Applicant's command at the time of his discharge; the Applicant's command was aware that the Applicant had been processed through a medical evaluation board for a mental health condition at the time he came under investigation and was discharged. The intent of liberal consideration generally does not apply to premeditated misconduct, including willfully defrauding multiple government agencies of employment and disaster relief funds for years. The severity of the Applicant's misconduct is not outweighed by his mental health condition. Further, based on the available in-service records, it is unlikely that the Applicant's mental health condition caused or substantially contributed to the Applicant's extensive and willful financial deception.*

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

*The intent of liberal consideration does not apply to premeditated misconduct, including the Applicant's willful deception for financial gain over a period of years during his time in service. The severity of the Applicant's misconduct outweighs any mitigation from a mental condition the Applicant may have had during his time in service, thus the Applicant's discharge 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, 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 "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "Misconduct (Serious Offense)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 14 January 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)