

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT

FD-2023-00115

SUMMARY: The applicant was discharged on 13 July 2015 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airman* with a Under Other Than Honorable Conditions Discharge in Lieu of Trial By Court-Martial. The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason, and a change to the reenlistment eligibility code.

The applicant was represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 01 June 2023.

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 Air Force Discharge Review Board (AFDRB), 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 reenlistment eligibility 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 an Article 15, a vacation of suspended non-judicial punishment, a Letter of Reprimand, and Court-Martial Charge sheet. His misconduct included: Operated a vehicle while alcohol concentration was over the limit of 0.08; Driving while impaired with a blood alcohol content of 0.10; Willfully failed to refrain from providing alcohol to a person under the age of 21; on or about 01 June 2014 and on or about 30 September 2014, wrongfully used oxycodone, commonly referred to as Percocet, a Schedule II substance; commit a sexual act upon another by penetrating the vulva with his penis, when she was incapable of consenting to the sexual act due to impairment by an intoxicant; commit a sexual act upon another by penetrating the vulva with his tongue, when she was incapable of consenting to the sexual act due to impairment by an intoxicant.

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 AFDRB Brief detailing the applicant's service information and a summary of the case.

The applicant, through counsel, contended that the discharge was not proper due to the lack of consideration on the totality of the circumstances surrounding the case, specifically, the timing of the initial allegations of Article 120, which were eventually withdrawn and dismissed. Additionally, the applicant's overall career lacked consideration. They also contended inequity due to his overall service record and conduct prior and subsequent to military service. They highlighted that the discharge is disproportionate when balanced to the totality of the circumstances.

The Board reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The Board determined that the even with the initial allegations being

withdrawn and dismissed, after review of the applicant's circumstances in totality, it found the seriousness of the applicant's willful misconduct offset the positive aspects of his service.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade his discharge characterization, to change the discharge narrative reason, and to change the reenlistment eligibility 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 "In Lieu of Trial by Court-Martial," and the reentry code shall remain "4H." The Air Force DRB (AFDRB) results were approved by the board president on 06 July 2023.

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)