

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**CASE NUMBER****FD-2023-00132**

SUMMARY: The applicant was discharged on 11 August 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Pattern of Misconduct. The applicant appealed for a change to the reenlistment eligibility code.

The applicant was not represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 20 July 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 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 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 multiple Letters of Counseling and Reprimand for failure to obey orders.

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 she was wrongly discharged from the Air Force and discriminated against because she was undergoing gender transformation. She further contended that it was both immoral and unethical to order her to follow male grooming standards and that she did not receive adequate support from her medical providers or her leadership to assist her with her Medical Transition Plan (MTP).

A review of the applicant's record revealed she was born male and chose to transition to the female gender during her time in the Air Force. The applicant submitted medical records with her application that indicated she was in the process of acquiring an Exception to Policy (ETP) to establish an MTP. In the records there was a medical note dated 1 April 2022 that indicated there would be a discussion with the applicant and her command that she would continue to follow grooming standards according to her gender identified in DEERS until she was approved for an ETP, and after validation from the Transgender Medical Health Exam Unit (THMEU). The available evidence indicated the applicant was never fully approved for a gender transition before she was discharged.

LIBERAL CONSIDERATION:

Due to evidence of a mental health condition found in the applicant's medical 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, or psychiatrist. 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 post-traumatic stress disorder (PTSD); Traumatic Brain Injury (TBI); sexual assault, and sexual harassment. The Board considered the following:

1. Did the veteran contend that a condition or experience may have excused or mitigated their misconduct or discharge?

The applicant contended "I was discharged from the USAF with a General discharge because I refused to adhere to male grooming standards, as I was six months into medically transitioning and had already socially transitioned. My Hormone Replacement Therapy (HRT) was sanctioned by my PCM, though I did initiate it through a civilian doctor."

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

The applicant's record revealed she received mental health services during her time in service. A review of the applicant's records revealed she reported symptoms of depressed mood, suicidal ideation, and gender dysphoria. The applicant's records indicated she received outpatient services, partial hospitalization treatment, and inpatient psychiatric care during her time in service. The applicant's records also indicated she received the diagnoses, in service, of major depressive disorder and gender dysphoria.

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

Based on the applicant's DD 214, she was discharged with a General characterization due to a pattern of misconduct. A review of the available records revealed the applicant received multiple Letters of Counseling and Reprimand over a twenty-one day period related to the applicant's refusal to comply with a commander's order to get a haircut to conform with male gender grooming standards until she was granted the appropriate ETP in accordance with Department of the Air Force Policy Memorandum (DAFPM) 2021-36-01, Accessions and In-Service Transition for Persons Identifying as Transgender. The applicant stated in her rebuttal to the administrative counselings that she had informed the command of the circumstances leading to the delays in the MTP and thus not being able to obtain an ETP.

IAW DAFPM 2021-36-01 "Medically necessary care may include real life experiences (RLE). Full time RLE may be achieved when, as a component of the MTP, a Service member receives an approved ETP for dress and appearance and use of facilities. The policy further states the Commander will "Consider the All-Volunteer Force readiness model in evaluating a request for medical care or treatment or an ETP associated with gender transition during a Service member's first term of service. Any other facts and circumstances related to an individual Service member that impact that model will be considered by the commander as set forth in this issuance and DoDI 1300.28, In-Service Transition for Transgender Service Members."

There is evidence the applicant's mental health condition of gender dysphoria may have caused or substantially contributed to the misconduct that led to the applicant's discharge and thus may mitigate the applicant's discharge.

4. Does that condition or experience outweigh the discharge?

In considering the totality of the applicant's time in service, there is evidence the applicant's mental health condition may have outweighed her discharge. Furthermore, the records indicated the applicant's command offered no grace toward the situation and the applicant had an otherwise satisfactory service record. In considering the applicant's request for a change to her RE Code to allow reentry into the military, the DRB is not the waiver authority for pre-existing conditions. At the time of the applicant's discharge, there is evidence she may have had potentially disqualifying conditions for military service. Therefore, the Board changed the reentry code to 2C to coincide with an involuntary honorable discharge.

FINDING: The DRB voted unanimously to **approve** an upgrade to the applicant's discharge characterization to Honorable and a change to the discharge narrative reason to Secretarial Authority. The DRB also voted unanimously to change the reenlistment eligibility code to 2C.

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 but the service characterization and narrative reason were inequitable. Therefore, the awarded characterization of service shall change to "Honorable," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall change to "2C." The Air Force DRB (AFDRB) results were approved by the board president on 28 August 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

