

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**CASE NUMBER****FD-2023-00143**

SUMMARY: The applicant was discharged on 3 May 2019 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for a Misconduct (Drug Abuse). The applicant appealed for an upgrade of her.

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 an Article 15 for wrongful use of marijuana and wrongful distribution of Oxycodone.

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 sexually assaulted by her supervisor on multiple occasions. She claimed the trauma she experienced from the assaults caused her to spiral downward and suffer from mental health problems. She further claimed she only smoked marijuana once and only gave a friend some of her Oxycodone medication one time.

A review of the applicant's records revealed she was punished under Article 15 for wrongful use of marijuana and wrongful distribution of Oxycodone. The evidence in the record suggested she sold her own Oxycodone medication to a fellow Airman. The applicant did not report the sexual assaults while in the military. She submitted medical records from the Department of Veterans Affairs (DVA) where she did report the assaults. She also reported to the DVA that she had been sexually assaulted by a family member prior to joining the military. She has been diagnosed with post-traumatic stress disorder by the DVA and been given a total 90% disability rating.

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 checked the boxes on the application for “PTSD” and “sexual assault/harassment.” The applicant contended that she took full accountability for the actions that led to her discharge but contended she was unaware of the things her friend was involved with, had financial troubles due to problems at the finance office, experienced a death in the family, and was raped by her supervisor upon arriving to her new assignment.

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

There is evidence the applicant received mental health care during her time in service. The applicant’s records reflected she attended two sessions with a behavioral health provider and later two sessions at the mental health clinic. She reported difficulty sleeping, body image issues, and intermittent low mood related to pre-service traumas. The applicant’s records reflected she was command referred to ADAPT for substance misuse during her time in service. The applicant also contended she experienced multiple rapes during her time in service. A review of the applicant’s records revealed the applicant received the diagnosis, in service, of adjustment disorder with mixed disturbance of emotion and conduct.

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

A review of the applicant’s service records revealed she was discharged with a General character of service due to misconduct (drug abuse). There is no evidence of a nexus between the applicant’s mental health condition, contended experiences of rape, and the misconduct that led to her discharge. The applicant stated in her application statement that she “got offered to take a hit off of a joint at a party” from her friend and she agreed. The applicant’s records also reflected that she allowed the same friend who offered her marijuana to take an Oxycodone from her room. There is no evidence or records of a mitigating nexus between the applicant’s in service mental health symptoms, or her claimed experiences of rape, and the misconduct that led to her discharge. It is possible the applicant experienced rape in service, however, there is no evidence the applicant’s experience caused or substantially mitigated the misconduct that led to her discharge.

The applicant submitted select DVA documents as evidence in support of her claim in which she reported to her provider her experience of in service rape, as well as multiple rapes prior to her time in service. The DVA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member’s fitness to serve, the narrative reason for release for service, or the length of time that has transpired since the date of discharge. The DVA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the “snapshot in time” of the applicant’s service, there is no evidence a mental health condition or experience caused or mitigated the misconduct which 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.

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 did not find any evidence of impropriety or inequity.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade her discharge characterization to Honorable. The DRB also voted unanimously to *deny* changing the discharge narrative reason and 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, the narrative reason for separation shall remain, and the reentry code shall remain. The Air Force DRB (AFDRB) results were approved by the board president on 27 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)

