

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT

SUMMARY: The applicant was discharged on 20 August 2020 in accordance with Air Force Instruction 36-3209, *Separation and Retirement Procedures for Air National Guard and Air Force Reserve*, with an Entry Level Separation for Entry Level Performance/Conduct. The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason and associated separation code, and 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 25 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 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 his discharge was inequitable as it was based on one isolated incident. He contended the discharge authority ordered his discharge based on unsubstantiated statements without any evidence and violated his due process rights by not providing him a rights advisement. He claimed the investigators did not interview the key witness, his spouse, and hid allegations against him, violating his constitutional rights. As a result of his discharge, he has suffered repeated career opportunity loss and is unable to reenlist into the military.

A review of the applicant's records revealed he was witnessed acting in a forceful and physical manner with his wife while on base. Witnesses reported he drug her to their car, with her arm behind her back, and eventually placed her in a headlock. The witnesses also reported the wife was visibly upset and crying. The applicant denied the allegations stating that he was only trying to direct his wife back to their car because she was upset with him for leaving her in the car while he attended to outprocessing requirements, and he was only trying to defuse the situation. The wife later submitted a statement that relayed a different scenario and indicated that she did not feel she was the victim of assault.

The applicant voluntarily submitted a statement to Security Forces regarding the incident. A review of the Security Forces report revealed the rights advisement portion of the applicant's statement was crossed out indicating he was not read his rights. The DRB noted, as a general matter, failure to read a member their

rights under Article 31, UCMJ, would generally prevent a statement from being used as evidence in a court-martial or an Article 15. However, there is no legal prohibition to its use/consideration for administrative actions, such as an administrative discharge. Therefore, the DRB determined the applicant's due process and constitutional rights were not violated.

After a thorough review of the available evidence and the applicant's contentions, the DRB concluded domestic abuse was observed by three independent witnesses. The preponderance of the evidence supported the allegation the applicant assaulted his wife and formed a legal basis for his discharge. Therefore, the DRB determined the seriousness of the applicant's willful misconduct offset the positive aspects of his service and found no evidence of impropriety or inequity.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade his discharge characterization to Honorable, to change the discharge narrative reason and associated separation code to Secretarial Authority, and to change the reenlistment eligibility code to 2C or 3K.

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 28 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)