

<b>AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT</b>	<b>CASE NUMBER</b> <b>FD-2023-00164</b>
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**SUMMARY:**

The applicant was discharged on 23 September 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airman* with a General Discharge for Misconduct (Serious Offense). 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 appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 18 July 2023. No witnesses were present to testify on the applicant's behalf.

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 and a Letter of Counseling. His misconduct included: Failed to refrain from sending himself one or more nude photos of another Airman from their phone; failed to refrain from sending himself one or more nude photos of another Airman from a 3<sup>rd</sup> party's phone; failed to maintain minimum dorm standards.

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 through counsel contended that the discharge was unfair at the time and remains unfair now. They also contended that the discharge was procedurally and substantively defective. During the personal appearance, the applicant provided sworn testimony. Regarding the incident, he said that he and the victim were looking at their camera galleries on their phones and she showed him some crude photos of herself. He went to charge her phone and in a moment of weakness, sent himself the photos of her using her phone. He highlighted that the photos were never distributed, and he had no ill intent. Post-service, he started part time work and is getting a certificate in cyber security. They feel he deserves an upgrade because he was punished twice, once with an article 15, and then through discharge. The applicant concluded that an upgrade would benefit him greatly in his post-service life.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The applicant claimed that he was punished twice, however an Article 15 is non-judicial punishment, and the discharge is an administrative action. Furthermore, the term double

jeopardy only applies to court trials. The DRB concluded that the discharge received was appropriate for the egregious misconduct committed by the applicant.

### **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 have a condition or experience that may excuse or mitigate the discharge?

*The applicant, through counsel, checked the box for "other mental health" on the application. The applicant nor counsel made any other claims or contentions regarding a mental health condition or experience. No substantiating evidence was submitted in support of the applicant's claim. The applicant, through counsel contended with no other details "The discharge was unfair at the time and remains so now. The discharge was procedurally and substantively defective. The applicant requests liberal consideration."*

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

*There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited any clinically significant features of a mental health condition during his time in service.*

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

*A review of the applicant's service records revealed the applicant was discharged with a General character of service due to misconduct (serious offense) with four years and thirteen days' time in service. There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited any clinically significant features of a mental health condition during his time in service. During the applicant's personal appearance hearing the applicant, through counsel, stated he experienced anxiety and depression related to being under investigation and the discharge processes due to his misconduct; the applicant stated he sought the supportive services of the chaplain during his time in service. There is no evidence a mental health condition caused or mitigated the misconduct that led to the applicant's discharge. While military legal investigations and proceedings can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings. Further, liberal consideration is generally not appropriate for premeditated misconduct and misconduct involving harm to others.*

4. Does that condition or experience outweigh the discharge?

*Because the applicant's discharge is not mitigated or excused, 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.

**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 seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, Air Force Board for Correction of Military Records.

**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 “General,” the narrative reason for separation shall remain “Misconduct (Serious Offense),” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the board president on 2 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://afrbaportal.azurewebsites.us>

Attachment:  
Examiner's Brief (Applicant Only)