

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**SUMMARY:**

The applicant was discharged on 05 February 2016 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airman* with a Under Other Than Honorable Conditions 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 on 22 August 2023. A witness was 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 reenry 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 Letter of Reprimand, and multiple Letters of Counseling. His misconduct included: Solicited sex from a minor, who he believed was 16 years old; requested and received photos of the minor's genitalia and sent photos of his to the minor; Disobeyed a lawful order to report to hospital due to his reported illness; Failed to report for duty; Failed to go to physical training; Failed to go at the time prescribed to the appointed place of duty; and with the intent to deceive, made an official statement to a SNCO that "I have been at work all day," which was totally false.

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 he did not commit the alleged misconduct that he was discharged for, and the government did not prove that he did. Additionally, they contended that the applicant was not afforded an administrative board for separation as required for under other than honorable discharges. Furthermore, they stated that the discharge was too harsh for the alleged misconduct and the overall record is deserving of an Honorable characterization.

Additionally, during the personal appearance, through sworn testimony, the applicant through counsel indicated that the civilian case was dismissed. After further explanation, it was said that the dismissal was a result of a plea deal where he had to meet probationary requirements, which he did. They also explained that there were mitigating circumstances, specifically, that he did not seek out this minor, and the decision to meet was mutual. Lastly, counsel indicated that multiple commanders in the applicant's chain of command recommended a General rather than an Under Than Honorable Conditions discharge which indicated how they felt about the misconduct.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. Although the civilian case was indeed dismissed and sealed, it was part of a plea deal rather than a form of acquittal. It was clarified that if the member met the probationary requirements, which he did, then the deferred charges would later be dismissed. The Board also acknowledged that the member did not actively seek out the underage victim; however, he did engage in continued communication, exchanged photos, and attempted to meet the individual after learning about their age. Addressing the argument that he was not afforded a discharge Board; it is noted that the applicant unconditionally waived his right to the administrative discharge board as indicated in the discharge legal review. Finally, the Board recognized that there were two recommendations for a General (under Honorable conditions) discharge, however, these are merely suggestions, with the decision resting with the Separation Authority regarding the granted characterization. The Board concluded the applicant's misconduct was a significant departure from the conduct expected of all military members, therefore; the discharge was deemed to be appropriate.

FINDING: The DRB voted 2 to 1 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 "Under Other Than Honorable Conditions," 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 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://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)