

<b>AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT</b>	<b>CASE NUMBER</b> <b>FD-2023-00209</b>
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**SUMMARY:** The applicant was discharged on 14 April 2014 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable (UOTHC) discharge for Misconduct (Serious Offense). The applicant appealed for an upgrade of his discharge.

The applicant was not represented by counsel.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 08 August 2023. Two 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 Reprimand. His misconduct included: dereliction of duty for providing alcohol to minors, consuming alcohol off base in Phase II of technical training, false official statements, and attempt to sexually assault a child, communicating a lewd act, and communicating indecent language.

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 because it was based on one isolated incident, and he had an otherwise honorable service record. He claimed he had multiple awards for his performance and a lengthy list of other accolades. He contended he was discharged for an incident that he was involved in during the most mentally and physically challenging time in his life. He had to undergo three separate surgeries, was going through a divorce from his wife, and was dealing with the news of his sister's cancer diagnosis. He developed depression during this time and the decisions he made during were affected by his mental health and do not reflect his true character.

A review of the applicant's record revealed he attempted to sexually assault a child he believed to be 13 years old. He attempted contact with the child, sent an image of his genitalia, and communicated indecent language to her. He also fled apprehension by police and obstructed justice by destroying evidence. The local authorities maintained jurisdiction of his case, therefore, the unit administratively discharged him. The applicant submitted an unconditional waiver and waived his right to a discharge board hearing and to submit

statements. The applicant also received an Article 15 early in his career for dereliction of duty and false official statements.

The applicant testified at his hearing that he did in fact attempt to contact the child via an adult only online application/website. He admitted to attempting to set up a meeting location with the child. The meeting turned out to be a sting operation and the applicant was arrested for his actions. The applicant admitted he knew he should not have tried to contact and/or meet the child, but he was mentally not in a good place due to his surgery, medications, and family situation and his actions were out of character for him. He also testified that he felt no one in his unit helped him after his arrest and instead chose to immediately discharge him. Finally, he testified that he was convicted in civilian court after his discharge for enticing a minor, sending harmful materials to a minor, and obstruction of justice.

The applicant's witnesses testified on his behalf claiming the applicant was a stellar Airman, of good character, and that his mental state was not good after his arrest. Further, the witnesses claimed they felt his discharge before the civilian charges were disposed of was premature and inequitable.

### **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:

The applicant checked the box for "other mental health" on his application. The applicant contended "my discharge was inequitable because it was based on one isolated incident. I had honorable active military service with no other adverse actions." The applicant highlighted his service assignments and awards. The applicant also contended "I was administratively separated for an incident that I was involved in during the most mentally and physically challenging time of my life." The applicant stated that he had three surgeries, a pending divorce, and family health problems at the time of his discharge. The applicant contended "The decisions I made during that time frame were not due to my character, but were due to my mental health."

The applicant's contention that he received no other adverse actions during his time in service is incongruent with the evidence in the applicant's service records. There is no evidence the applicant sought or received any mental health services prior to his arrest. There is no evidence or records the applicant endorsed or exhibited any clinically significant indicators of a mental health condition prior to his arrest. There is evidence the applicant was referred to, and received, supportive mental health services by his unit superintendent while residing at his home after being arrested. There is also evidence the applicant received mental health services during his military legal proceedings. While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigated the misconduct that initiated the legal proceedings.

A review of the applicant's records revealed the applicant was discharged due to misconduct (serious offense) that involved harm to others, specifically attempts to sexually abuse children, fleeing apprehension, and destroying evidence. The applicant's request for relief is not considered under the intent of liberal consideration due to the pre-meditated nature of the misconduct, and the applicant's misconduct involving harm to others.

The board concluded the applicant's misconduct was a significant departure from the conduct expected of all military members. Therefore, the DRB determined that the administrative actions taken by the chain of command in this case were proper and equitable.

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

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, 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 10 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)

