

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT

SUMMARY: The applicant was discharged on 8 September 2022 in accordance with Department of the Air Force Instruction 36-3211, *Military Separations*, 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 associated separation code, and a change to the reentry code.

The applicant was represented by counsel.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 17 October 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 reentry 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 a Letter of Reprimand for sexual assault.

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.

Through counsel, the applicant contended he was unjustly and unfairly discharged with an inequitable service characterization. The applicant contended he was falsely accused of sexual assault. He claimed he cooperated with local law enforcement officials and the district attorney dropped the case. The applicant further claimed that the Office of Special Investigation conducted a separate investigation, and instead of taking the matter to a court-martial, the unit served the applicant with a Letter of Reprimand and administratively discharged him without the opportunity to defend himself at a trial or a discharge board hearing.

A review of the applicant's record revealed he was accused of sexually assaulting a female. The victim reported the assault to local law enforcement and the local authorities retained jurisdiction of the case. The victim reported to law enforcement that her and the applicant initially met on an online dating site and that they later agreed to meet in person at the applicant's apartment. While at his apartment, the victim claimed the applicant forcibly had sex with her against her will. Prior to going to a trial, the victim decided she no longer wanted to participate in the trial or to testify. The local authorities dropped the charges, and the unit issued a Letter of Reprimand and discharged the applicant.

The applicant testified at his DRB hearing that the sex was consensual, the victim never told him to stop, and he did not assault her. He claimed the victim may have been offended by his disinterest in her after their encounter which may have prompted her to report she was assaulted. Furthermore, the applicant claimed the victim had a history of a prior sexual assault and was on multiple medications for various mental health issues. Finally, the applicant claimed the science of the evidence did not support a sexual assault occurred.

The applicant checked the “other mental health” block on his application. However, during his hearing he testified that he did not have a mental health condition that mitigated any misconduct, and again reiterated no misconduct occurred. Therefore, liberal consideration was not applied to his case.

Given the totality of the circumstances the Board concluded, by a preponderance of the evidence, the offense committed by the member brought discredit to the Air Force, and when weighed against the overall record of performance, warranted the characterization of discharge received. Misconduct of this serious nature constitutes a significant departure from the conduct expected of Airmen and outweighs his otherwise satisfactory service.

FINDING: The DRB voted 3 to 2 to *deny* the applicant’s request to upgrade his discharge characterization, to change the discharge narrative reason and associated separation code, and to change the reentry 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 24 October 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)