

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT	CASE NUMBER FD-2023-00222
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SUMMARY: The applicant was discharged on 28 August 2023 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions (UOTHC) discharge in lieu of trial by court-martial. The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The applicant was represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 24 August 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 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 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 his discharge was inequitable and resulted in an injustice because his mental health mitigated his misconduct while on active duty; his quality of service was honorable prior to the infraction that led to the discharge; his personal and family problems affected his ability to serve satisfactorily; and his post service conduct embodied military values regarding rehabilitation and second chances.

The applicant contended he was a stellar performer and received many accolades prior to circumstances that changed his life. Specifically, his wife left him, and he was injured in a car accident. These events took a toll on his mental health, and he began to self-medicate with alcohol, leading to a DUI. Additionally, the applicant contended the event that ultimately led to his discharge was a false claim by another Airman and was far less serious than reported, was not premeditated or severe misconduct, and his mental health condition outweighed the misconduct.

Finally, the applicant contended that his mental health had a big influence on his choice to accept a discharge in lieu of court-martial. He claimed he was suffering severe anxiety and lacked the confidence to go through trial, therefore, he felt it better for his mental health to accept the UOTHC discharge in lieu of court-martial.

A review of the applicant’s records revealed he had charges preferred against him for driving under the influence of alcohol and for reckless endangerment with a firearm. He was represented by civilian counsel at the time, and they submitted a request for a Chapter 4 discharge in lieu of trial, which was approved by the

convening authority. The applicant submitted records from a civilian mental health provider that diagnosed him with PTSD related to the car accident he was in and adjustment disorder with mixed anxiety and depressed mood.

LIBERAL CONSIDERATION:

Due to the applicant's contention of a mental health condition, 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 contend that a condition or experience may have excused or mitigated their misconduct or discharge?

The applicant checked the boxes for "PTSD" and "other mental health" on the application. The applicant, through counsel, contended (in part) the applicant's discharge resulted in an injustice because his mental health mitigated his misconduct while on active duty.

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

A review of the applicant's in service records revealed he was command directed to ADAPT subsequent to being under investigation and receiving a DUI. The applicant's records reflected he deferred services pending the outcome of the investigation and then declined services although he did comply with bi-weekly check-ins from a provider for the duration of his deferment period. There is no evidence the applicant was seen by a mental health provider during his time in service. The applicant, through counsel submitted a statement indicating he utilized Military Family Life Counselor (MFLC) services during his time in service.

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

A review of the applicant's DD 214 revealed the applicant was discharged with a UOTHC characterization in lieu of trial by court-martial.

A review of the applicant's military entrance paperwork (MEPS) revealed he denied any and all pre-service history of drug use. The military entrance paperwork also revealed the applicant did not disclose any pre-service history of ADHD and did not disclose any pre-service history of being prescribed medications of any kind. The applicant's post-service report of pre-service conditions would have potentially been disqualifying for military service and evidence of the applicant's lack of candor. The applicant's records reflected he was charged with aggravated DUI. The applicant did not disclose his arrest or offense to his leadership until after they found out through another mechanism, at which time the applicant was under investigation for another offense involving harm to another. It is unlikely that a mitigating mental health condition caused the applicant to deceive his leadership.

A review of the applicant's in service medical records revealed no mental health encounters for the duration of his time in service. Further, after the applicant came under investigation the applicant was command referred to ADAPT, which he deferred upon the advice of his ADC. As part of the deferral process, the records reflected the applicant participated in bi-weekly check-in's with ADAPT providers. The applicant denied any and all mental health symptoms, declined the need for mental health services, reported his mood

to be “great” or “good” and was advised of where he could obtain supportive services should he need them. The applicant submitted a letter from a MFLC provider indicating he utilized MFLC support services from March 2018 - March 2020. There is no additional information provided about the nature or frequency of MFLC encounters and MFLC services do not provide mental health diagnosis and can be utilized for a wide variety of issues that are not related to a mental health condition. The MFLC also stated “[the applicant] was going through challenging times and he took responsibility to stay focused and duty ready while in the Air Force.”

Based on a review of the applicant’s records, it is more likely than not the applicant’s mental health condition developed post service. The applicant submitted an assessment by a psychologist who indicated the applicant, at the time he was assessed, met the criteria for adjustment disorder, with mixed anxiety and depressed mood, and PTSD. The symptoms endorsed by the applicant during the post-service assessment are incongruent with evidence available for review in the applicant’s in-service military records. There is no evidence, nor does the provider contend, that the post-service assessing psychologist was the applicant’s treating provider or had any encounters with this applicant during his time in service. The opinions and summary findings submitted by the applicant’s post-service evaluator are not statements from the applicant’s providers at the time of the applicant’s service. While the post-service providers are able to render an opinion of the applicant at the time he was in their treatment, they can only speculate about the applicant’s time in service and cannot render an opinion or diagnosis about the snapshot in time of the applicant’s military service.

There is no evidence the applicant exhibited or endorsed any clinically significant indicators of PTSD or any other mental health condition during his time in service. The records revealed the applicant described to his post-service psychological evaluator that he experienced mental health symptom development in response to relational stressors and difficulty coping with stressors contributed to additional occupational and legal problems. There is no evidence or records the applicant exhibited or endorsed any clinically significant indicators of PTSD or any other mental health condition during his time in service. Psychosocial stressors and the applicant’s maladaptive coping skills do not constitute a mitigating mental health condition. There is no evidence the applicant had a mental health condition, in service, that caused or substantially contributed to the misconduct that led to his discharge.

4. Does that condition or experience outweigh the discharge?

Because the applicant’s discharge is not mitigated, 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 and did not find any 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 to Secretarial Authority, and to change the reentry 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 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)

