

**SUMMARY:**

The applicant was discharged on 03 February 2020 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General Discharge for Misconduct (Minor Infractions). The applicant appealed for an upgrade of his discharge characterization.

The applicant was not represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 21 September 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 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 multiple Article 15s, a vacation of suspended non-judicial punishment, a Letter of Reprimand, and a Letter of Counseling. His misconduct included: On or about 9 Sep 19, without authority failed to go at the time prescribed to the appointed place of duty; on or about 9 Sep 19, without authority failed to go at the time prescribed to the appointed place of duty, a mental health appointment; on or about 29 Sep 19, without authority, failed to go at the time prescribed, to the appointed place of duty; on or about 1 Oct 19, without authority, failed to go at the time prescribed, to the appointed place of duty; negligently failed to inform anyone from the supervisory chain that he would be absent from work; Failure to fulfill responsibilities; Mishandled personal firearm by point the weapon in the vicinity of his roommate while intoxicated; apprehended on suspected domestic abuse charges. During investigation he was found to have an alleged history of domestic disputes and alcohol use.

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 requested an upgrade because of the harassment he suffered due to his mental health and marital status.

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 chain of command gave the applicant ample opportunities to change his negative behavior through progressive discipline. He continued this behavior which eventually led to an administrative discharge. The Board determined that the discharge received, was appropriate for the

pattern of misconduct that was committed.

### **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 checked the boxes for "PTSD" and "other mental health" on the application. The applicant contended "I respectfully request my character of discharge be upgraded due to the harassment I suffered due to my mental health and marital status." The applicant also contended "I believe that [both Article 15s] were given to me because I was both married to a Doctor and that I had tried to do the right thing by notifying an outside the squadron entity about the injustices that were taking place in my squadron. I believe they preyed on me because of my mental health issues which [first sergeant] had previously told me he did not believe I had."*

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

*There is no evidence the applicant received a diagnosis of PTSD during his time in service; There is no evidence the applicant exhibited any clinically significant features of PTSD, or any other mental health condition, during his time in service. There is no evidence or records to substantiate the applicant's contention that he developed PTSD during his time in service. There is evidence the applicant received mental health service intermittently during his time in service related to occupational, financial, legal, and marital stressors. The applicant's records reflected the applicant reported the presence of an external stressor would cause his mood symptoms, and the symptoms were alleviated by the resolution of the stressor. The applicant's records revealed he was command referred to ADAPT on two occasions over a period of two years during his time in service and was minimally participative in alcohol treatment recommendations and exhibited denial regarding the impact his alcohol use was having on his mood and overall functioning. The applicant's records revealed the applicant received the diagnosis, in service, of alcohol abuse.*

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

*The applicant's DD214 revealed the applicant was discharged with a General characterization of service due to misconduct (minor infractions) with five years, seven months, and twenty-four days' time in service. The applicant stated in his personal statement that he received an Article 15 for not going to work despite being relieved from duty by his supervisor and a second Article 15 for being two minutes late to work because he was observing a homeless man collecting worms from the ground to fish and also stated "I had never been late before." The applicant's commander noted in the discharge notification "The respondent has been given numerous opportunities to meet Air Force expectations, but he has failed to do so. The respondent's misconduct has spread over a 2-year period and shows no indication of ceasing."*

*In the applicant's response to discharge notification, the applicant requested to be considered for an Honorable discharge. The applicant stated "I believe this is because until my health started to deteriorate, I had a very good career. As my physical health has deteriorated my mental health has started to severely suffer. As the months have gone by, my anxiety has started to negatively impact my work. Although my*

*anxiety is better now, it is still very high and sometimes uncontrollable.” At the time of the applicant’s discharge, the reviewing authorities stated in the Administrative Discharge Legal Review “Respondent has received two NJPs, an LOR, and an LOC, all of which constitute a sufficient basis for discharge. It should be noted though although Respondent’s written matter alleged that he has had increasing stress and anxiety, mental health is not the basis for discharge and should not be considered. Under AFI 36-3208, paragraph 5.11 discharge based upon a condition that interferes with military service is not appropriate if the airman’s record would support discharge for another reason, such as misconduct or unsatisfactory performance. Here, because Respondent’s record supports discharge for minor disciplinary infractions under AFI 36-3208, paragraph 5.49, it would be inappropriate to consider Respondent’s mental health as a basis for discharge. Additionally, it does not appear that anxiety is related to the disciplinary infractions that serve as the basis for discharge.” The board concurs that there is no evidence of a nexus between the applicant’s reported symptoms of anxiety and the misconduct(s) that led to his discharge.*

*The applicant submitted his VA rating as evidence to support his claim but did not support any mental health treatment records. Regarding the applicant’s concurrence with his VA rating, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member’s fitness to serve, the narrative reason for release for service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the “snapshot in time” of the applicant’s service, there is no evidence the applicant’s reported symptom of anxiety caused or mitigated the misconduct(s) which led to the applicant’s discharge.*

4. Does that condition or experience outweigh the discharge?

*Based on review of the applicant’s records, the applicant’s made his mental health symptoms known, and they were fully considered by the applicant’s command during the discharge process. No error was found in review of the applicant’s records; thus the applicant’s discharge is 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 found no evidence of inequity or impropriety.

**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 reentry code.

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 "General," the narrative reason for separation shall remain "Misconduct (Minor Infractions)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the board president on 26 September 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)

