

SUMMARY:

The applicant was discharged on 09 September 2016 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions Discharge in Lieu of Trial by Court Martial. The applicant appealed for an upgrade of his discharge characterization.

The applicant was 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 a Court-Martial Charge Sheet and an Article 15 His misconduct included: Commit sexual contact upon another, without her consent, by touching her breast with his hand, rubbing her thigh with his hand, and grabbing her buttocks with his hand, with the intent to gratify his sexual desire; Cause another to engage in sexual contact by pulling her into his lap, with the intent to gratify his sexual desire; Commit sexual contact upon another by touching their genitalia with his hand, with the intent humiliate or degrade them; Commit sexual contact upon another by touching their genitalia with his hand, with the intent humiliate or degrade them; negligently failed to refrain from forming an unprofessional relationship with another (x2).

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 indicated that he felt coerced into signing the discharge documents and was led to believe that a UOTHC discharge was his only option. He explained further that he was not afforded a proper explanation and was vaguely informed that he was filling out the paperwork so that he didn't have to face a Court-Martial. The applicant specified that he was not informed of what he was getting into, regarding adverse consequences of a Discharge in Lieu of Trial.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. Furthermore, it is the applicant's burden to provide evidence concerning their contentions of impropriety or inequity. The applicant did not meet this burden; therefore,

the Board concluded that the discharge received was appropriate.

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 box for "PTSD" on the application. The applicant made no other claims or contentions regarding a mental health condition in his personal statement. The applicant contended that he "felt coerced into signing documents and that I was led to believe that accepting this UOTH discharge was my only option and I was not afforded proper explanation prior to signing anything."

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

There is no evidence the applicant sought or received any mental health treatment 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 a mental health condition caused or mitigated the misconduct(s) that led to the applicant's discharge.

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

A review of the applicant's DD214 revealed the applicant was discharged with an Under Other than Honorable Conditions character of service in lieu of trial by court martial with fourteen years, four months, and four days' time in service.

The applicant made no claim or contention that a mental health condition caused or substantially contributed to the misconduct that led to the applicant's discharge. There is no evidence or records the applicant exhibited or endorsed any clinically significant indicators of PTSD, or any mental health condition during his time in service. While military legal proceeding can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings. Furthermore, liberal consideration is generally not applied in circumstances involving harm to others, multiple victims in this applicant's circumstance.

The applicant submitted records of his post-service mental health treatment as evidence in support of his claim. A review of the records revealed the applicant felt traumatized by being accused of sexual assault during his time in service. Regarding the applicant's concurrence with his VA diagnoses, 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 had a mental health condition that caused or mitigated the misconduct(s) which led to the applicant's 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 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 "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "In Lieu of Trial by Court-Martial," 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

