

SUMMARY:

The applicant was discharged on 26 November 2019 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, a change to the discharge narrative reason, and a change to the reentry code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 03 October 2023. A witness was present to give a character statement 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 multiple Letters of Reprimand, a Letter of Admonishment, and a Letter of Counseling. His misconduct included: Failed to have flight training ready for presentation; Failed to obey an order. Skateboarding without a helmet after being verbally counselled; Late for duty on multiple occasions; Came to work with blonde hair on top and black on the sides after previously being counselled on this issue; Dereliction of duty. Failed to provide correct slides for presentation; During weekend duty, knowingly and willfully did not perform duties; Failed to perform to standards.

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 through counsel indicated that an upgrade to Honorable is warranted based on criteria established by federal law and the Hagel, Kurta, and Wilkie memos. They contended inequity and explained that the applicant was suffering from depression and anxiety due to a contentious work environment and sexual assault, which impacted his behavior and ability to trust leadership. They stated that this caused incidents at work which caused an unfair and unwarranted bias against him by command. Applicant and counsel claimed that the combination of the bias and his mental health issues resulted in the misconduct and his eventual discharge. They concluded that the mental health excuses and mitigates the misconduct that resulted in the discharge.

During the personal appearance, the applicant indicated that command did help with his mental health issues. When asked by the Board what he wanted supervision to do, the applicant stated that he wished they would have given him advice, as they've had years of experience. When the Board asked the applicant if he took

responsibility for his actions, he indicated yes for some, but highlighted four (4) acts of misconduct that he did not. He went on to explain that the skateboard issue was because he did not believe his supervisor due to a prior incident where he was pointed to the wrong regulation. Therefore, he had to verify for himself before complying. The applicant also stated that the computer issue was not his fault, as he was trying to get it fixed. Lastly, the applicant indicated that he attempted to fix his hair issue, but the dye was fading away, so he used temporary color. He also highlighted that he was unaware he had to show up to work with the temporary hair color already applied. The applicant's counsel concluded that the discharge was inequitable due to the applicant's mental health struggles, and the mental health issues led to misconduct, which led to more mental health issues.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. After thorough consideration of the applicant's contentions and a review of the medical records by the Board's mental health advisor, the DRB concluded that the mental health issues the applicant was experiencing while in-service did not mitigate the misconduct that resulted in the discharge. The applicant failed to adjust to the military way of life and did not meet the expectations put on him. The discharge received was deemed appropriate for the misconduct 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 box for "other mental health" on the application. The applicant, through counsel, contended "[the applicant was a victim of sexual assault by his partner while in service, resulting in mixed emotions and worsening of his depression and anxiety. His environment and the assault led [the applicant] to have trust issues, which contributed to his misconduct. [the applicant] sought mental health treatment during his service; however, despite his treatment, his depression and anxiety continued and contributed to his behavior."

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

A review of the applicant's records revealed the applicant received mental health care during his time in service. The applicant's records reflect the applicant received the diagnosis, in service, of narcissistic personality disorder.

A review of the applicant's in-service records revealed no evidence or records of the applicant's contention of experiencing sexual assault. The applicant's records reflect the applicant endorsed, to a post-service provider, an occurrence of a non-consensual sexual encounter.

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 a General characterization of service due to misconduct (minor infractions) with one year, five months, and twenty-six days in service.

The Board reviewed the applicant's previous request to the Board for relief and noted the applicant requested an upgrade to Honorable based on his 30% VA service connection rating to allow him to pursue entitlement to Post 9/11 education benefits. The applicant and counsel contended during the personal appearance hearing that he was experiencing mental health distress during his time in service because he did not get along with or feel appreciated by his leadership during his time in service. The applicant contended that he lacked guidance from his leadership and his lack of trust for his supervisor exacerbated his mental health conditions.

The applicant's misconduct and subsequent disciplinary actions preceded his encounters with the mental health clinic. Additionally, the evidence and records indicated the applicant utilized the mental health clinic and made statements of suicidal ideation to avoid and get out of work situations and disciplinary actions, which appear to be stemming from the applicant's resistance or refusal to adapt to military requirements. A review of the applicant's records revealed the applicant described symptom development in response to relational and environmental stressors and difficulty coping with stressors contributed to additional occupational and legal problems. The applicant's testimony during his personal appearance hearing was conflicting and contradictory to the evidence available for review in the applicant's in-service and post-service records. The applicant reported during his personal appearance hearing that he requested Zoloft after he attempted three sessions with the MFLC and it wasn't working to resolve his distress. The applicant's records revealed the applicant was resistant to behavior change. The applicant also stated during his personal appearance hearing that he was taking Zoloft and was not feeling great. However, the applicant's records revealed the applicant reported he felt much better within three days of starting the Zoloft medication.

There is no evidence a mental health condition caused the misconduct that led to the applicant's discharge. There is evidence the applicant exhibited and endorsed difficulty adjusting to the military lifestyle and poor coping skills which may explain the applicant's misconduct, but it does not constitute a mental health condition and does not mitigate the misconduct that led to the applicant's discharge. A review of the available records indicated the applicant was aware of his behaviors and made poor decisions by his own volition and not caused by having a mental health condition or the residual effects of his nonconsensual sexual encounter. The applicant's records reflect the applicant received the diagnosis of personality disorder (narcissistic personality disorder) and adjustment disorder during his time in service, and although this may have caused or contributed to his misconduct, it does not mitigate his discharge. The applicant's personality disorder traits likely caused his behavioral and misconduct issues in service and are considered incompatible for military service. Personality disorders and traits are conditions of a developmental nature—they are pervasive, stable, persistent, and often resistant to treatment. This condition may explain the applicant's misconduct, but it does not mitigate the misconduct.

Regarding the applicant's concurrence with his VA ratings, 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 from 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. This is distinct from liberal consideration in that at the "snapshot in time" of the applicant's service, there is no evidence the applicant's mental health conditions 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 condition does not mitigate his discharge, it does not outweigh his discharge.

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 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 (Minor Infractions),” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the board president on 10 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)

