

**SUMMARY:**

The applicant was discharged on 12 June 2014 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 not represented by counsel.

The applicant requested the board be completed based on a records only review. The Board was conducted on 14 December 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 an Article 15, a vacation of suspended non-judicial punishment, multiple Letters of Reprimand, and a Letter of Counseling. His misconduct included: Consumed alcohol under the legal drinking age; with the intent to deceive, make a false official statement to a security forces patrolman, then he was born in 1989; Failed to go at the time prescribed to his appointed place of duty; Failed to go at the time prescribed to his appointed place of duty; Reported to work unfit for duty. Specifically, smelling of alcohol, acting unusual, appeared extremely tired, and when asked to read a document out loud, he was mumbling and slurring his words; Failed to pay a debt of \$4,300.00 to Sky housing for his October and November rent; Over the previous 11 months, member had accrued \$729.91 in unauthorized charges on his GTC; On divers occasions, negligently failed to pay his travel card vendor for outstanding charges.

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 contended that he was improperly diagnosed while in service and his condition was not taken into consideration during the time of his discharge. The applicant indicated that post-service, he was diagnosed with Bipolar Depression and extreme anxiety, which was service connected. He concluded that he is unable to receive his VA benefits due to the discharge characterization.

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 Board understood the applicant's present service characterization renders him ineligible for Department of Veterans Affairs education benefits. However, this is not a matter of inequity or impropriety which would warrant an upgrade.

### **LIBERAL CONSIDERATION:**

Due to evidence of a mental health diagnosis and/or experiences of sexual assault or sexual harassment and/or records documenting that one or more symptoms of mental health conditions and/or experiences of sexual assault or sexual harassment existed/occurred during military service found in the applicant's 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, psychiatrist or social worker with training on mental health issues connected with PTSD or TBI or other trauma. 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 PTSD; 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 contended "I was not properly diagnosed while in service. While separated, the VA determined my diagnosis of bipolar depression and extreme anxiety was service connected. This was not taken into consideration during the time of my discharge. But I do not receive my benefits including the GI Bill due to my discharge characterization."*

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 bi-polar disorder, 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 bi-polar disorder during his time in service. The applicant's records revealed he was command referred to ADAPT on multiple occasions due to maladaptive alcohol use and alcohol related misconducts and participated in alcohol education classes, level one treatment and was referred for level two treatment prior to be referred to command as unsuccessful in the ADAPT treatment program.*

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 and Under Other than Honorable conditions character of discharge in lieu of trial by court martial with five years, eight months, and twenty days' time in service. The applicant's discharge package was not available for review.*

*A review of the applicant's in service records revealed the applicant received seven documented misconducts during his time in service that were either due to maladaptive alcohol use or financial matters. There is no evidence or records to suggest the applicant's maladaptive alcohol use was a coping strategy for an underlying mental health condition. There is no evidence the applicant requested or received any mental health treatment, aside from some brief marital counseling, during his time in service. There was also no record of any observed mental health issues by his leadership, or any complaints made by the applicant to his medical providers about any mental health issues while he was in the service other than frustration that he was being discharged. There is no evidence a mental health condition caused or mitigated the*

*misconducts that led to the applicant's discharge.*

*The applicant referenced a diagnosis given to him by the VA as evidence in support of his claim. 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 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. 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 / her 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 presiding officer on 3 January 2024. 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)



