

SUMMARY: The applicant was discharged on 12 December 2012 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Misconduct (Serious Offense). 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 28 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 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 an Article 15. His misconduct included: conspiracy to commit a crime, wrongful possession/transferring of sexually explicit material, communicating a threat, indecent language, invaded the privacy of another Airman's computer and Facebook account, harassment, and he created a fake email and Facebook account to harass the Airman.

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 while deployed he experienced mental distress and his overall mental health drastically declined. He claimed he was singled out because he was friends with the victim and knew details of the situation. He also claimed that he was coerced by Security Forces into giving a confession regarding the misconduct, and that after the investigation, he was assaulted verbally, mentally, and physically, resulting in PTSD. Due to the forced/false confession he requested an upgrade.

A review of the applicant's record revealed while deployed overseas he was involved in multiple incidents of misconduct involving a female Airman. He conspired to commit larceny to purchase software for the Airman's computer. He also violated a General Order by wrongfully possessing and transferring sexually explicit material. He also communicated a threat against the Airman and used indecent language towards her. Furthermore, he hacked into the Airman's email and Facebook accounts and transmitted explicit material of the Airman to both himself as well as an NCO. Finally, he changed the security settings on her Facebook account and email account, created a Facebook and email account with a fake name, and used the accounts to send messages to the Airman describing the explicit material of her that he had obtained without her permission to demand she provide additional explicit material to him. The applicant waived his right to submit a response to the discharge action. The applicant is 50% service connected by the Department of

Veterans Affairs for unspecified anxiety disorder (claimed as PTSD) and has an overall 70% disability rating.

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 contend that a condition or experience may have excused or mitigated their misconduct or discharge?

The applicant checked the boxes on the application for "PTSD" and "other mental health." The applicant contended "I was deployed to Al Udeid AB in 2012. While there I experienced mental distress and my overall mental health drastically decreased leading up to the event that eventually led to my discharge. After the investigation I was assaulted verbally, mentally, and physically up until the unit left resulting in PTSD. Due to the false/forced confession I would like to request an upgrade in discharge."

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

Based on the available records, there is no evidence the applicant sought or received any mental health treatment during his time in service, and no evidence the applicant has sought or received any post service mental health services. 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 also no evidence or records to substantiate the applicant's contention that he developed PTSD 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 he was discharged with a General character of service due to misconduct (serious offense). Liberal consideration was not applied to this applicant's request. Based on a review of the available records, the misconduct for which the applicant was discharged was pre-meditated and involved harm to others and is generally not considered under the intent of liberal consideration. Additionally, the applicant did not contend, nor is there any evidence to suggest, a mental health condition caused the misconduct that led to the applicant's discharge. While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigated the misconduct that initiated the legal proceedings.

4. Does that condition or experience outweigh the discharge?

Liberal consideration was not applied to this applicant's request. Based on a review of the available records, the misconduct for which the applicant was discharged was pre-meditated and involved harm to others and is generally not considered under the intent of liberal consideration.

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. The DRB also voted unanimously to *deny* changing the discharge narrative reason and 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 (Serious Offense),” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the board president on 3 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)

