

SUMMARY: The applicant was discharged on 15 October 2021 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 her 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 and multiple Letters of Admonishment and Reprimand. Her misconduct included: failure to follow orders, false official statements, failure to go, and a DUI.

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 she was sexually assaulted twice, once by a stranger and the second time by her intimate partner. She claimed she was a good Airman prior to the assaults and her misconduct was a direct result of them. She further claimed her leadership did nothing to try and help her and she eventually tried to commit suicide.

A review of the applicant's record revealed she received multiple administrative counselings and an Article 15 for various incidents of misconduct, including dereliction of duty, false official statements, and a DUI that resulted in an accident. Prior to the misconduct she made an unrestricted report of sexual assault. She later voluntarily withdrew from any participation in a trial or administrative discharge board hearing and requested the assailant be punished under Article 15 and administratively discharged.

The applicant submitted some medical records with her application that indicated she was seeking mental health treatment prior to her discharge and prior to her misconduct. She also submitted a Department of Veterans Affairs (DVA) disability rating letter with her application and is 70% service connected for conditions unknown to this Board.

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," "other mental health," sexual assault/harassment," and "intimate partner violence/domestic violence." The applicant contended "I was sexually assaulted by a stranger, and then again assaulted by my intimate partner. Before these assaults I was in love with my job and took it very seriously. I was never in any kind of trouble before I was assaulted, beaten, and unheard. I started getting into trouble and became self-destructive when I felt my command was refusing to help me. There were times my partner broke his restraining order, and my command told me they couldn't help me. I eventually attempted suicide due to this. I desperately wanted to continue in service, but I eventually asked my First Sergeant to discharge me because I was tired of feeling punished for reporting."

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

A review of the applicant's in service records revealed she received the diagnoses, in service, of adjustment disorder, alcohol dependence, and personality disorder, unspecified. The applicant revealed that she received inpatient, outpatient, partial hospitalization, intensive outpatient, and substance use treatment services during her time in service. The applicant submitted evidence that she filed an unrestricted report of sexual assault during her time in service.

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

The applicant's DD214 revealed she was discharged with a General character of service due to misconduct (minor infractions). There is evidence the applicant reported an extensive history of pre-service trauma and maladaptive coping skills. These conditions are considered to have existed prior to service (EPTS). The applicant's records revealed that she had difficulty focusing on her linguist coursework after her assault and was subsequently removed from the classes. The applicant's records reflected she attributed her maladaptive alcohol use, poor coping skills, and relationship dysfunction on her childhood trauma rather than on her in service experience which she described to providers as "unwanted touching."

There is also evidence the applicant exhibited and endorsed features of a personality disorder during her time in service. The applicant's personality disorder traits likely caused her 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.

There is no evidence of a nexus between the applicants in service experience of sexual assault or her mental health conditions and the misconduct that led to her discharge. The applicant's most serious misconduct

included violating suspended on-base driving privileges and knowingly making false statements about her identity.

The applicant submitted her DVA rating as evidence in support of her claim. Regarding the applicant's concurrence with her DVA rating, the DVA, 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 DVA 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 mental health condition caused or mitigated the misconduct which led to her discharge.

4. Does that condition or experience outweigh the discharge?

The applicant was discharged due to misconduct. Based on a review of the applicant's records, the applicant's experience of sexual assault and mental health conditions were known and 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 her discharge characterization. The DRB also voted unanimously to **deny** changing the discharge narrative reason and 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 03 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)

