

**SUMMARY:**

The applicant was discharged on 25 February 2019 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions Discharge for Misconduct (Civil Conviction). The applicant appealed for an upgrade of his discharge narrative reason.

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 04 January 2024.

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 a General Court Martial order and a notification of discharge. His misconduct included: Convicted in civilian court of committing multiple felonies, to wit: Two (2) counts of sexual intercourse by force; two (2) counts of sexual penetration by force; four (4) counts of forcible oral copulation; three (3) counts of incest; Wrongfully have sexual intercourse with a married woman, not his wife

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 did not indicate a specific request but stated that the discharge board never looked at the years of good conduct. Additionally, the applicant claimed that the decision to discharge was based on biased information they should never have had access to. He instructed that the DRB should look at his military record only and further clarified that the Board should not look at anything after February 2015.

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 concluded the applicant's misconduct was a significant departure from the conduct expected of all military members, and therefore is appropriate.

## **LIBERAL CONSIDERATION:**

The applicant checked the boxes for “PTSD” and “other mental health” on the application. The applicant contended “Because the board never looked at all the years of my good conduct. Made the decision based on biased information they should never had access. Look at mil record only. Use service July 87-Jan 2015, nothing after Feb 2015.”

Liberal consideration is not applied to this applicant’s request. The applicant was convicted in civilian court of raping and sexually assaulting his biological daughter and imposed a sentence of fifty years in prison. The severity and premeditated nature of this applicant’s misconduct(s) which occurred repetitively over an extended period of time during his time in service is excluded from 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, 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 “Misconduct (Civil Conviction),” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 5 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)

