

SUMMARY: The Applicant was discharged on 26 June 2020 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 their discharge characterization.

The Applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 09 July 2024. No witnesses were present to testify 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 and multiple Letters of Counseling. Their misconduct involved failing to report, disobeying orders, neglecting duties, providing false statements, and violating regulations such as speeding on base without proper documentation. Additionally, they failed to maintain professionalism, both on and off duty, including inappropriate behavior during duty hours.

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 requested an upgrade to an honorable discharge, citing recent diagnoses of sleep apnea and depression/anxiety. They believe these conditions developed during their service and were not properly addressed, negatively impacting their military career. Additionally, the Applicant testified about perceived racial bias within their leadership. They asked the Board to review their military record in light of these diagnoses. They submitted a Veterans Affairs claims letter and several character statements from their unit to support their request.

The DRB found that the Applicant's military record revealed a consistent pattern of misconduct marked by several disciplinary actions. Although the Applicant was diagnosed post-service with sleep apnea, depression, and anxiety, there is no compelling evidence that these conditions directly caused or significantly contributed to the misconduct that led to their discharge. The Applicant's failure to consistently report and address their mental health issues during service, combined with insufficient evidence linking these conditions to their misconduct, does not warrant an upgrade to an honorable discharge. Despite the progressive disciplinary measures, the Applicant's supervision took to rehabilitate them, these efforts were ultimately unsuccessful. The Applicant's claims of improper suicide watch and allegations of racial bias by supervision are serious; however, they lack sufficient evidence and corroboration within the military record or provided evidence. The supervision's actions align with standard disciplinary procedures, and there is no clear indication that racial bias influenced the Applicant's case. While the Board acknowledges the

Applicant's post-service efforts, including career changes and further education, these do not outweigh the documented misconduct during their service. The Board found no evidence of a mental health condition that would excuse or mitigate the misconduct leading to the discharge and therefore determined that there is no justification to upgrade the Applicant's discharge to honorable.

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 post-traumatic stress disorder (PTSD) or traumatic brain injury (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 submitted multiple applications to the Board with multiple contentions. In the application dated 29 April 2023 the Applicant checked the boxes for "PTSD", "other mental health", and "DADT" and contended "after my separation I was seen at the VA center and diagnosed with both sleep apnea and depression/anxiety, all being service connected. I was never given the proper care or attention during AD to address the development of these condition and their adverse effect[sic] on my military career." In the application to the Board dated 15 December 2023 the Applicant checked the box for "other mental health" and contended "I have submitted previous applications to the DRB before now having my undiagnosed and now diagnosed mental health condition in my current disability status...I ask the Board grant my change due to undiagnosed mental health conditions that I didn't receive the mandated care for [sic] while in service."

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

The Applicant's records revealed the Applicant received mental health and substance misuse services during his time in service at the suggestion of his leadership. The Applicant's records revealed the Applicant denied mental health symptoms or problematic substance use during his time in service on multiple occurrences of assessment. The Applicant's records revealed the Applicant stated to providers that he believed his sleep difficulties to be primarily due to his shift work schedule, although there is evidence the Applicant reported feeling stressed and anxious upon notification of discharge. There is no evidence the applicant received the diagnosis of PTSD, or any other mental health diagnosis, during his time in service. The Applicant's records revealed the Applicant denied any mental health symptoms during his time in service until immediately prior to discharge and related to his discharge processing.

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 character of service due to misconduct (minor infractions) with two years, seven months, twenty days' time in service. A review of the Applicant's discharge package revealed the Applicant's disciplinary actions included three LORs, four LOCs, a non-recommendation for promotion to Senior Airman, establishment of a UIF, and placement on the control roster.

The Applicant contended he was diagnosed post service with sleep apnea, and depression and anxiety; he further claimed these conditions were not diagnosed during his time in service and he did not receive proper care for these conditions although they developed during his time in service and had an adverse effect on his military career. A review of the Applicant's in-service medical records revealed the Applicant underwent extensive sleep testing during his time in service and received the diagnosis of sleep apnea, mild. Further,

sleep apnea is a medical condition that is, in and of itself excluded from the intent of liberal consideration. There is no evidence, the Applicant's medical condition manifested any mental health symptoms during his time in service. The Applicant's records revealed the Applicant received mental health and substance misuse services during his time in service at the suggestion of his leadership. The Applicant denied mental health symptoms or problematic substance use during his time in service and on multiple occurrences of assessment. The Applicant stated to providers he believed his sleep difficulty to be primarily due to his shift work schedule. The Applicant's records revealed he requested to return to mental health service upon notification of his discharge due to feeling stressed and anxious. There is no evidence the Applicant received the diagnosis of PTSD, or any other mental health diagnosis, during his time in service. There is no evidence the Applicant endorsed or exhibited any clinically significant indicators of PTSD during his time in service. The Applicant's records revealed the Applicant denied any mental health symptoms during his time in service until immediately prior to his discharge. A review of the Applicant's records revealed the Applicant made it known to his leadership and to his medical providers that he did not feel military customs and courtesies were necessary and he preferred to be left alone to do his work. There is no evidence mental health condition caused or substantially contributed to the misconducts that led to the Applicant's discharge.

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. 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 or excused by a mental health condition, the Applicant's discharge 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 their 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 "4I." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 5 September 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://afrbaportal.azurewebsites.us>.

Attachment:

Examiner's Brief (Applicant Only)

