

SUMMARY: The applicant was discharged on 18 September 2007 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General service characterization for Misconduct (Minor Infractions). The applicant appealed for an upgrade of her discharge characterization.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 31 October 2023. A witness was 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 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, including 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 Letter of Reprimand, and a Letter of Counseling. Her misconduct included: Willfully failed to refrain from consuming alcohol under the age of 21; Failed to refrain from visiting off base lodging as a non-prior service single Airman; Failed to wear appropriate uniform while off station in Phase II status; Having knowledge of a lawful order to not enter a location as a result of a No-Contact-Order, did so enter that location; Was found in Dayroom at 0020 hours, which is a violation of Phase I curfew restriction of 2200 hours and when confronted, was not truthful to the NCO; Violated Phase II by departing base while in civilian clothing; Received three (3) derogatory 341s for failing to sign off on a detail two days in a row after being warned; Having a cell phone while in uniform; and Being late to charge of quarters with uniform infractions.

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, through counsel, contended that the discharge is inequitable and improper when considering her Post-Traumatic Stress Disorder (PTSD) due to military sexual trauma (MST). They explained that the misconduct was related to her PTSD symptoms.

During her personal appearance the applicant, through counsel, indicated that the current DD214 is not representative of who she is or who she could have become. They stated that the discharge is improper, as command failed to handle her MST properly in accordance with Air Force instructions. They stated that her command informed a chaplain without the applicant's permission. Further, less than 24-hours after the MST, her chain of command and the chaplain came into her dormitory room to discuss the incident. The applicant explained that instead of being protected, she was being questioned while in pajamas and trying to get some rest. She stated that she was bullied by the chaplain, accused of making up a story and shamed for ruining the alleged perpetrator's career.

Additionally, testimony was provided by a witness. This witness was a member of the Sexual Assault Prevention and Response (SAPR) office during the time of the applicant's MST. He has 18 years of experience on SAPR policies and procedures and was generally aware of her case but was not directly involved. The witness indicated that he was asked if he could shed some light on the situation and provide his professional opinion. The witness stated that command could have done a better job of taking care of the member after the MST, instead of focusing on her misconduct. He highlighted current Department of Defense policy, *Safe-to-Report Policy for Service Member Victims of Sexual Assault*, pertaining to collateral misconduct associated with MST. If the victim's misconduct was minor in nature, to include drinking underage, violating curfews, dormitory policies, or similar matters at the time of the alleged MST, those infractions are normally dropped in order to take care of the victim. He added that if she were in the situation today, she would not have been discharged because the collateral misconduct was minor in nature and punishment would not have been issued.

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 PTSD; Traumatic Brain Injury (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 boxes for "PTSD" and "Sexual assault/harassment" on the application. The applicant, through counsel, contended "[The applicant] respectfully requests that the Air Force DRB decision denying her discharge upgrade request be reconsidered. [The applicant] maintains that her discharge was inequitable and improper in consideration of her PTSD due to her MST, her misconduct related to the symptoms of her PTSD, and her conduct subsequent to separation from military service."

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

The applicant, through counsel, contended during her time in service she was sexually assaulted while intoxicated causing her to commit some minor disciplinary infractions. The applicant also stated she experience harassment after she reported her MST as it was an unrestricted report. There is evidence she reported being sexually assaulted to her mental health providers, leadership, police, and victim advocate/sexual assault team/SARC [Sexual Assault Response Coordinator] during service as contended. There is no evidence the applicant received the diagnosis of PTSD while in service; the applicant's records reflect she received in service mental health treatment subsequent to her MST experience and received the diagnosis of depression, unspecified and adjustment disorder with anxiety and depressed mood. The applicant submitted to the Board an affidavit obtained during her time in service in which she detailed her experience of harassment to an investigating officer. The applicant was unable to recall why she was asked to provide this affidavit at the time but as she previously stated, she experienced harassment after reporting the MST.

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

The applicant's records revealed the applicant was discharged with a General service characterization due to misconduct (minor infractions) with eight months and ten days' time in service.

During her personal appearance, the applicant acknowledged she found it difficult to adjust to the military lifestyle and admitted to the Board although she was successful following orders and rules in BMT, she struggled with the freedom she was allowed in tech school. She stated she made poor choices including underage drinking and disregard for the rules. The applicant acknowledged she was aware of the rules and, in reflecting upon her time in service, knows now that they were for her safety and were not arbitrary. The applicant's records reflect she received mental health treatment and was hospitalized for depression caused by her MST during service and her treatment did coincide with the time frame of some of her misconduct. The applicant stated during her personal appearance hearing that she has gaps in her memory after her MST and could not recall the mental health treatment or how she was referred to mental health services. She did remember agreeing with the contents of the memorandum the mental health provider sent to the applicant's commander concerning her disciplinary action, which the applicant submitted to the Board. In the memorandum to the commander, the mental health provider stated, "After a sexual assault in May 2007, [the applicant] initiated treatment in the Mental Health Clinic with [provider]. She was initially treated for anxiety related to the recent assault. However, her symptoms have significantly worsened to include, increased sense of hopelessness, suicidal ideation, and self-injurious behaviors, due to increased environment stressors and repeated revictimization."

A review of the available records and consideration of the applicant's personal appearance testimony indicated the applicant made poor decisions both by her own volition and as a result of the impacts of a mental health condition from the residual effects of her MST experience. The Board found the applicant's experience of harassment or MST may have mitigated the misconducts that led to her discharge.

4. Does that condition or experience outweigh the discharge?

In considering the totality of the applicant's time in service along with the available records and testimony provided at the personal appearance hearing, there is evidence the applicant's experience of MST outweighed her discharge.

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.

FINDING: The DRB voted unanimously to **approve** the applicant's request to upgrade her discharge characterization and to change the discharge narrative reason. Additionally, the reentry code will change as it is associated with the characterization; however, the applicant will remain ineligible to reenter service.

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 inequitable. Therefore, the awarded characterization of service shall change to "Honorable," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall change to "2C." The Air Force DRB (AFDRB) results were approved by the Board President on 7 November 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)