

**SUMMARY:** The applicant was discharged on 16 December 2021 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for a Pattern of Misconduct. The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason and associated separation code, and a change to the reentry code.

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 26 October 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, a demotion action, and a special-court martial conviction. His misconduct included: failure to go, failure to obey orders, and failure to fulfill responsibilities.

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 his discharge should be upgraded based on his length of service as he was only 120 days from his contract end date. He claimed he was suffering from personal problems, insomnia, and depression that affected his ability to perform his duties.

A review of the applicant's records revealed he had multiple incidents of failure to go and failure to obey orders issued by his chain of command. He was punished under Article 15, administratively demoted, and eventually court-martialed for his offenses. He was sentenced to 90 days confinement by a military judge. He was subsequently administratively discharged for misconduct. In his response to the demotion action, he claimed he was suffering from personal stressors and a physical injury that prohibited him from his fulfilling his duties. He declined to sign acknowledgment of the discharge action thus waived his right to submit a response. The applicant checked the other mental health block but did not provide any evidence, other than his statement, to support this contention.

## **LIBERAL CONSIDERATION:**

Based on the applicant's contention of a mental health condition, 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 box for "other mental health" on the application. The applicant contended "The board should grant my requested change based on my length of service, I was discharged 120 days before my contract end date, my service records, my medical record at the time of discharge and personal problems that affected my ability to serve satisfactorily. I was going through sleep difficulties that affected my mental state and was diagnosed with insomnia during service which affected my mood. I was also battling depression during service."*

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

*The applicant's records reflected he sought and received mental health services during his time in service. The applicant self-referred for reported symptoms of stress and attended sessions with the Behavioral Health Outpatient Provider (BHOP) beginning in December 2020 through his transfer to confinement. The applicant's records also reflected he was referred for a Command Directed Evaluation (CDE) and an Emergency Command Directed Evaluation (ECDE) and both times refused to provide any information and would not speak to a mental health provider or participate in a mental health evaluation of any kind. The applicant's records reflected he received the diagnosis, in service, of insomnia.*

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

*The applicant's records reflected he denied any mental health symptoms until his arrival at Yokota AB at which time he reported to the BHOP provider that he felt isolated and was getting into trouble in his workplace for minor things and that caused him stress. The applicant's records revealed his symptoms increased as his disciplinary actions increased, up to and including his special court martial, confinement, and discharge. The applicant's records are congruent with his contention that he was diagnosed with insomnia while undergoing progressive disciplinary actions and military legal proceedings. 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?

*There is no evidence a mental health condition caused or substantially contributed to the misconduct that led to the applicant's discharge. Because the applicant's discharge is not mitigated by a mental health condition, the applicant's discharge is also not outweighed.*

In making their decision regarding the applicant's request to upgrade his discharge, 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 concluded similarly situated Service members sometimes receive disparate punishments. A Service member in one location could face court-martial for an offense that routinely is handled administratively across the Service. While a court-martial or a command would be within its authority to choose a specific disposition forum or issue a certain punishment, DRBs should nevertheless consider uniformity and unfair disparities in punishments as a basis for relief. The Board determined in fundamental fairness a court-martial conviction for the applicant’s minor misconduct was overly harsh. Therefore, the Board determined the character of service the applicant received was inequitable given the totality of the applicant’s service and period of minor misconduct and concluded an upgrade was warranted.

**FINDING:** The DRB voted unanimously to **approve** the applicant’s request to upgrade his discharge characterization and to change his reentry code. The DRB also voted 2 to 1 to **deny** changing the discharge narrative reason and associated separation 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 granted relief on the basis of equity. Therefore, the awarded characterization of service shall change to “Honorable,” the narrative reason for separation shall remain “Pattern of Misconduct,” and the reentry code shall change to “2C.” The Air Force DRB (AFDRB) results were approved by the board president on 6 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://afrbaportal.azurewebsites.us>

Attachment:  
Examiner's Brief (Applicant Only)

