

**SUMMARY:** The applicant was discharged on 5 August 2010 in accordance with Air Force Instruction 36-3207, *Separating Commissioned Officers*, with an Under Other Than Honorable Conditions (UOTHC) discharge in lieu of trial by court-martial. The applicant appealed for an upgrade of his discharge characterization and a change to the discharge narrative reason.

The applicant was 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 reenry 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 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.

Through counsel, the applicant contended his discharge was inequitable based on the following points:

- 1) His misconduct was due to an addiction (gambling). Once he received the proper treatment and support, he was able to correct his behavior and respond to those affected by his addiction.
- 2) The applicant's counsel at the time of his resignation should have lobbied for a better service characterization based on the nature of the charges and the applicant's career accomplishments.
- 3) The applicant's post-service record is exceptional.
- 4) The intent of the UOTHC has been served and the passage of time since his resignation.

A review of the applicant's records revealed he had multiple incidents of financial misconduct including, wrongful use of his Government Travel Card, wrongful appropriation of funds, and writing bad checks. The totality of his misconduct was over \$100K. Charges were preferred against him, and he submitted a Resignation in Lieu of trial that was approved by the Secretary of the Air Force Personnel Council and the applicant was discharged with a UOTHC. The applicant claimed to have been a compulsive gambler which led to his misconduct. At the time of his discharge, he claimed to have sought out professional help for his gambling problem, had paid off all his debts, and had been clean for over a year. He also took other measures to recover from his gambling problem including registering with a lifetime registry that prevents his entry into casinos.

Due to 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 applicant's contention that the financial misconduct for which he was discharged was caused by a gambling addiction. Addiction, and the pursuit of the addictive substance or behavior, with no evidence of a nexus to an underlying mental health condition, is an unsuiting condition. The applicant's condition of pathological gambling may explain his misconduct, but it does not mitigate his misconduct, nor does it excuse his discharge. Unsuiting conditions are considered incompatible for military service and are referred to command for administrative action and separation as needed. The applicant made no contention that a mental health condition caused or contributed to his pathological gambling which led to his discharge. In fairness to the applicant, the board does not make assumptions nor presumptions.

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 and to change the discharge narrative reason.

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 "UOTHC," and the narrative reason for separation shall remain "in lieu of trial by court-martial." 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)



