

SUMMARY:

The applicant was discharged on 20 April 2023 in accordance with Department of the Air Force Instruction 36-3211, *Military Separations*, with an Under Other Than Honorable Conditions Discharge for Misconduct (Serious Offense). The applicant appealed for an upgrade of his discharge characterization.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 12 December 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 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 reenlistment eligibility 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 and multiple Letters of Reprimand. His misconduct included: Touched the buttocks of another, with his pelvis, with an intent to gratify his sexual desire, without her consent; touched the buttocks of another, with his hand, with an intent to gratify his sexual desire, without her consent; unlawfully pressed another against the wall with his body; Operated a vehicle while under the influence of alcohol; Attempted to drive onto base with suspended driving privileges.

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 of the character so that he may use his VA benefits to get help. The applicant explained that he was a good troop for almost 7 years, and it wasn't until he was assigned to morgue duty that the issues started. He indicated that he could not handle being at the morgue. He said he lost touch with reality, was not aware of things he did, and was afraid to sleep due to being traumatized. The applicant highlighted that he saw mental health numerous times and was still going at the point of separation.

The applicant, through sworn testimony during the Personal Appearance indicated the following: While station in Germany, his duty was accountability as part of Operation Allies Refuge. He felt that he was a failure, as many children were separated from their families. He highlighted that before this, he had no issues, was highly rated on his EPRs, and had no paperwork. The applicant continued to explain that after the operation, he was told his performance was substandard, which added to his feeling of failure. He spoke of his history of drinking in Korea, but said that the drinking became a real problem after being in Germany. Once he PCS'd, he felt alone, but later met someone who became a good friend. He indicated that he was able to share his mental health struggles with her. He professed that at some point, he thought they were

closer than they actually were, and he felt she was flirting and one day while walking with her, he committed the actions that resulted in his discharge. Additionally, the applicant's witness, his mother, highlighted that he was on his way to becoming an officer. After he moved back stateside, he would call her with problems, and so she tried to reach out to command to let them know. She mentioned that after his duty at the morgue, he was never the same. She said that he sought help, but mental health said he was ok. She stressed that her son did a lot of things right during service and deserves help. She concluded that he can't get the proper help from VA due to his UOTHC discharge. She said he can do walk-ins once a week, but no appointments could be made.

After a thorough review of the applicant's records, and consideration of his testimony, the DRB determined that the Character of discharge was harsh for the given misconduct. The Board also took note of the applicant's candor when making the statements and answering the Board's questions.

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 PTSD or 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 checked the boxes for "PTSD" and "other mental health" on the application. The applicant contended he was put on morgue duty and unable to handle it and "because of that I totally and still to this day lost touch with reality."

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

A review of the available records revealed the applicant was command referred to ADAPT after receiving a DUI during his time in service. The applicant deferred substance abuse services pending the outcome of the DUI investigation and later participated in level one substance use services. The applicant's records revealed he voluntarily sought mental health services at the urging of his leadership after he was command referred to ADAPT. The applicant's records revealed the applicant endorsed symptoms excessive worry, ruminating thoughts, and feeling restless that began when he came under investigation for sexual misconduct. The applicant received the diagnosis, in service of alcohol dependence and adjustment disorder.

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 an Under Other than Honorable character of service due to misconduct (serious offense) with nine years, two months, and days' time in service. The applicant's discharge package revealed the misconduct that led to his discharge included sexual assault, operated a vehicle under the influence of alcohol, and attempted to drive onto base with suspended driving privileges.

The applicant stated during his personal appearance hearing that he experienced significant distress about

working in the morgue and while working in Germany during the refugee crisis. The applicant stated he felt like he failed at his job duty and began drinking heavier to try to sleep and cope with his distress. The applicant's mother stated during her witness statement that when her son PCS'd from Germany to Travis AFB she noticed that something wasn't the same about him, but he was unwilling to discuss. The applicant stated he came under investigation within a few months of arrival at Travis and spoke with candor and remorse about the events that led to his discharge.

Regarding the applicant's maladaptive alcohol use, the applicant stated during his personal appearance hearing that he began using alcohol during his time in Korea but did not believe his alcohol use became problematic until the end of his time in Germany when he was assigned to morgue duties and stated he was using alcohol to help him sleep and also to help him avoid thoughts of distressing sights and experiences. The applicant stated his alcohol use further escalated during his investigation and he stated he continued to use alcohol during his time in ADAPT. The applicant's mother stated the applicant was told by mental health that he was "fine," and he did not know what else to do at that time to manage his sleep and nightmares. Based on a review of the available records, there is evidence the applicant's gaining leadership was aware the applicant had difficulties while working in mortuary affairs, and the applicant's mental health records revealed the applicant endorsed difficulty with sleep. Based on the applicant's testimony at his personal appearance hearing and the available records, there is evidence the applicant's maladaptive alcohol use was- as likely as not- an attempt to self-medicate an underlying mental health condition, with may mitigate the applicant's alcohol related misconducts.

4. Does that condition or experience outweigh the discharge?

Based on a review of the available records and consideration of the applicant's testimony and the totality of his time in service, there is evidence the applicant's mental health condition may outweigh his 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.

The Board considered the following applicable factors listed in paragraphs (7)(a)-(7)(r)

a. The applicant's candor;

The DRB took note of the applicant's candor in the application and during his personal testimony during the personal appearance. Candor alone does not warrant an upgrade to the discharge, however, this factor did assist in determining whether the characterization given was appropriate.

b. Whether the punishment, including any collateral consequences, was too harsh;

After a thorough review of the record and consideration of the applicant's sworn testimony, including an account of the misconduct, the DRB determine that the Characterization of the discharge was harsh when looking at the totality of the circumstances.

FINDING: The DRB voted unanimously to **approve** the applicant's request to upgrade his discharge characterization to General (Under Honorable Conditions) and to change the discharge narrative reason to "Secretarial Authority." However, it voted unanimously to **deny** any change the reentry code.

The Board determined that the applicant's service was honest and faithful, but that significant aspects of the member's conduct outweighed positive aspects of the member's military record, thus a General (Under Honorable Conditions) characterization, rather than an Honorable characterization, was appropriate.

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 "General," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the board president on 14 December 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)

