

**SUMMARY:**

The applicant was discharged on 06 December 2017 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General Discharge for Misconduct (Other). The applicant appealed for an upgrade of his discharge characterization 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 14 December 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 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 multiple Article 15s, a vacation of suspended non-judicial punishment and a letter of Reprimand. His misconduct included: Willfully failed to return to the dorm for accountability; touch through the clothing, the buttocks of an Airman, without her consent, to gratify his sexual desire, causing bodily harm; disrespectful in deportment towards an NCO, who was in the execution of her office, by adjusting and smirking at the position of attention, and answering questions in an unprofessional manner; willfully failed to refrain from having his cellphone on his person in the briefing room; willfully failed to smoke only after duty hours, and only in the designated student smoking areas; Failed to show at the mandatory check in time of 2345; failed to be in building by the established curfew hours of 0000; Failed to go at the time prescribed to his appointed place of duty; Failed block 1, unit 10, test A with a score of 73.3% when the minimum passing score was 85%.

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 indicated that days prior to PCSing, he was falsely accused of Sexual Assault by a soon to be discharged Airman. He stated that furthermore, months later, he was accused of rape by another Airman who was being medically discharged. He claimed that they received an other than honorable discharge in lieu of court martial due to the fact that he had an audio recording of the consensual sexual interaction which proved his innocence. The applicant highlighted that these women ruined his career, and the events that transpired still haunt him. He concluded that he's lost years of his life due to this trauma. He claimed he was diagnosed with PTSD while in service and has only recently begun to process it.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. The applicant did not provide sufficient evidence contrary to his record that would overturn the preponderance of evidence regarding the misconduct committed. The Board concluded that the discharge received was appropriate.

#### **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 "sexual assault/harassment" on the application. The applicant contended he was accused of sexual assault and rape "these women ruined my career as a Linguist, and then events that transpired still haunt me."*

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

*There is no evidence the applicant received the diagnosis of PTSD during his time in service. There is no evidence the applicant exhibited or endorsed any clinically significant features of PTSD, or any other mental health condition, during his time in service. A review of the applicant's records revealed the applicant was referred to ADAPT on two occasions during his time in service due to maladaptive alcohol use. A review of the applicant's records revealed the applicant self-referred to ADAPT while under investigation for two allegations of sexual assault and reported to providers that he was drinking heavily due the stress of the investigation. The applicant completed partial-hospitalization services, but was reported to be an ADAPT program failure due to his non-compliance with the program requirements and unwillingness to stop using alcohol. The applicant's records revealed he was referred to BAS during his discharge processing and denied any mental health symptoms and agreed to terminate his mental health services. The applicant was command referred to ADAPT a second time prior to his discharge and reported he was accused of sexual assault a third time due to an incident that occurred while he was intoxicated. The applicant declined ADAPT services, and reported to providers that he did not have any issues with his alcohol use and was noted to be an ADAPT program failure for a second time.*

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

*A review of the applicant's discharge revealed the applicant was discharged with a general character of service due to misconduct (other) with one year, nine months, and six days' time in service. A review of the applicant's discharge package indicated the primary basis for the applicant's discharge was sexual assault. Liberal consideration generally does not apply to misconduct that involves harm to others. Further, there is no evidence a mental health condition caused or mitigated the misconducts that led to the applicant's discharge. The applicant's records revealed he self-referred to ADAPT due to maladaptive alcohol use in response to being under investigation for sexual assault and was using alcohol to cope with the stress. A*

*review of the records revealed the applicant attributed being intoxicated to many of his misconducts. The applicant made no claim or contention that a mental health condition caused or substantially contributed to the misconduct(s) that led to the applicant's discharge. There is evidence the applicant was referred to and received mental health services during his ongoing investigation and military legal proceedings. While military legal proceeding can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings. Furthermore, liberal consideration is generally not applied in circumstances involving harm to others.*

4. Does that condition or experience outweigh the discharge?

*Because the applicant's discharge is not mitigated, his 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 his 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 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 "General," the narrative reason for separation shall remain "Misconduct (Other)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the presiding officer on 03 January 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)

