

**SUMMARY:**

The applicant was discharged on 26 March 2015 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General Discharge for Misconduct (Minor Infractions). The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason, 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 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 multiple Letters of Reprimand. His misconduct included: Assaulted his spouse; Sexually harassed another Airman; Used derogatory language to members of his unit and was disorderly; disrespectful to two SNCOs; Failed room inspection; set up a re-inspection appointment, but the member failed to show.

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 listed the infractions used to discharge him and explained each one. He took responsibility for one issue but contended that the other infractions he was written up for, were only because of his sexuality and specifically due to a particular SNCO having personal issues with him. The applicant would like to use his GI Bill benefits.

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 board noted the applicant's contention of unfair treatment; however, these claims were known during service and complaints made by the member were unsubstantiated. The Board understood the applicant's present service characterization renders him ineligible for Department of Veterans Affairs education benefits. However, this is not a matter of inequity or impropriety which would warrant an upgrade.

## **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 box for "sexual assault/harassment" and "intimate partner violence/domestic violence" on the application. The applicant contended "while I take full responsibility for [one of four referenced incident's of misconduct], I believe the other incidents would not have been elevated to the point of Letters of Reprimand and eventually discharged, if I had not been openly gay."*

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

*The applicant contended he experienced sexual harassment during his time in service. There is evidence the applicant filed an IG complaint in service related to his experiences of sexual harassment; the applicant's records also revealed the applicant made it known to his leadership in his disciplinary rebuttals that he believed his disciplinary actions were due to his sexual orientation.*

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 a general character of service due to misconduct (minor infractions) with two years, nine months, and eight days time in service.*

*There is no evidence the applicant's sexual preference had any bearing on him receiving (or not) a Letter of Reprimand for the domestic violence incident involving the applicant and his spouse. The applicant's records revealed that the applicant acknowledged striking and kicking his spouse resulting in his spouse retaliating and striking the applicant and damaging the family vehicle.*

*A review of the applicant's discharge package revealed the applicant made his claims of sexual harassment known at the time of occurrence and at the time of his discharge and the applicant's leadership and reviewing authorities at the time determined that not only were the applicant's claims of sexual harassment unsubstantiated, but that the applicant was the perpetrator of sexual harassment. The board acknowledges that it is possible the applicant can be both victim and offender of sexual harassment; however, in the applicant's case, the applicant filed an IG complaint with his contentions that was investigated during his time in service and was found to be unsubstantiated. Additionally, the applicant's discharge stated "[the applicant] was caught calling other Airmen by sexually harassing and derogatory terms and even requested an officer to refer to him as such."*

4. Does that condition or experience outweigh the discharge?

*Based on review of the applicant's records, the applicant's claims of sexual harassment were known, investigated, and fully considered by the applicant's command at the time the accusations were made and*

*during the discharge process. No error was found in review of the applicant's records, thus the applicant's discharge is 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 (Minor Infractions)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the presiding officer on 3 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

