

SUMMARY:

The applicant was discharged on 09 June 2022 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an "Under Other than Honorable Condition" Discharge for Misconduct (Drug Abuse). The applicant appealed for an upgrade of their discharge characterization.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 19 March 2024. No witnesses were 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 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 applicant's record of service included multiple Article 15s, multiple Letters of Reprimand, and a Letter of Admonishment. Their misconduct included: Failure to report an arrest to the command; Failure to go to a schedule training; An arrest for driving under the influence and possession of an open container; Unlawful drug use.

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 appeared before the Board to request an upgrade to their discharge, initially expressing difficulty transitioning to civilian life, attributing it to the stigma associated with the characterization and narrative reason from their DD214. The applicant revealed during their time in service experiencing intimate partner violence, which they felt impaired their decision-making abilities. They admitted to making poor choices during this time, including lying and concealing facts to their command out of fear of a false report of sexual assault from their abuser. The applicant testified that the abuse persisted up until their separation, culminating in an incident resulting in a traumatic brain injury. They pleaded for relief and a second chance from the Board.

The DRB acknowledges the applicant's desire for a second chance to serve in the military. However, the applicant's records indicate multiple instances of command referral to Alcohol and Drug Abuse Prevention and Treatment (ADAPT) following alcohol-related misconduct, including two instances of driving under the influence (DUI), a positive test for marijuana, and for cocaine. The applicant's record and testimony reveal multiple opportunities provided by the chain of command for the applicant to amend their negative behavior. The DRB concluded that no substantiated evidence or testimony was supporting the applicant's claim of

experiencing intimate partner violence during their military service, nor was there an established connection between the applicant's head injury sustained during service and the misconduct leading to their discharge. Ultimately, the DRB determined that the seriousness of the applicant's willful misconduct precludes granting a second chance.

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 post-traumatic stress disorder (PTSD) or traumatic brain injury (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 "TBI" and "Intimate partner violence/domestic violence" on the application. The applicant made no other contentions on the application and submitted his DD214 as evidence in support of his claim.

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

A review of the applicant's records revealed the applicant sustained a head injury during his time in service due to an alcohol related incident which resulted in a physical altercation. The applicant's records revealed the applicant denied residual impacts of the assault after being evaluated and followed up by medical providers. The applicant's records revealed the applicant self-referred to ADAPT on one occasion and participated in an intake evaluation but did not follow-up with services for maladaptive alcohol use. The applicant's records also revealed the applicant was command referred to ADAPT on at least three occasions subsequent to alcohol related misconduct including two DUIs, testing positive for marijuana, and testing positive for cocaine. The applicant participated in alcohol education sessions and deferred further substance use services pending the outcome of his investigations. The applicant's records also revealed the applicant requested medication management for symptoms of attention deficit disorder and received medications although declined therapy or behavioral intervention modalities.

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

A review of the applicant's DD214, Certificate of Release or Discharge from Active Duty, revealed the applicant was discharged with an Under Other than Honorable character of service due to misconduct (drug abuse) with two years, eleven months, nine days time in service. The applicant's command reported the applicant lacked candor and was not truthful about his activities outside of work. A review of the applicant's records revealed the applicant reported contradictory symptoms and partial clinical presentations to providers during his time in service.

There is no evidence of a nexus between the applicant's reported mental health symptoms of poor concentrations and the egregious, severe, and repetitive misconduct that led to his discharge. In addition the applicant's records revealed the applicant reporting to provider that his symptoms were fully controlled by the medications he was prescribed in service, the applicant's in-service mental health symptoms and

diagnosis of attention deficit disorder are and unsuiting condition that would not result in administrative discharge and do not mitigate the applicant's misconduct. There is no evidence of a nexus between the applicant's incurred head injury during his time in service and the misconducts that led to his discharge. The applicant provided testimony during his personal appearance hearing that he'd experienced intimate partner violence during his time in service because his girlfriend (at the time) told him she would claim he sexually assaulted her if he left her. The applicant stated to the Board he did not report this but felt this weighed on him during his time on service. The applicant stated he is unsure if this contributed to his misconduct but felt he had to choose between his relationship and the truth which would have continued his service career. There is no evidence, nor did the applicant provide any testimony to substantiate his contention that he experienced intimate partner violence during his time in service.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated, the applicant's 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 their 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 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 proper and equitable. Therefore, the awarded characterization of service shall remain "Under Other than Honorable," the narrative reason for separation shall remain "Misconduct (Drug Abuse)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 2 April 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)