

SUMMARY:

The applicant was discharged on 15 December 2008 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General Discharge for Misconduct (Serious Offense). 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 18 January 2024.

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 a Special Court Martial Report of Result of Trial and an Article 15. His misconduct included: On divers occasions, with the intent to defraud the United States by writing and delivering to the base club, 15 bad checks totaling \$6,159.59, knowing he did not have sufficient funds; from 31 December 2007 to 11 August 2008, dishonorably failed to pay rent of 1300 euros to his landlord; negligent in following technical data, resulting in the loss of 3 man-hours; Operated his motorcycle in a reckless manner by riding on the back wheel alone for some distance; failed to wear reflective garment or vest while riding a motorcycle at night; made a false official statement to a SNCO indicating that he was given permission to ride a motorcycle without the required motorcycle safety briefing.

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 contended that he received double jeopardy because he received punishment through Special Court Martial, was returned to duty, then administratively discharged.

The DRB reviewed the applicant's entire service record and found no evidence of impropriety or inequity to warrant an upgrade of the discharge. Administrative actions, including a discharge is not considered double jeopardy. The discharge received was deemed 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 contended he began gambling in 2007 after his return from deployment. The applicant stated in his personal statement "Upon arriving back from Iraq, I found myself in a different state of mind, but I was young and considered this emotions, actions, and feelings to be normal. I began gambling, gambling consumed me and fogged my judgement."

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

A review of the applicants in-service records revealed the applicant self-referred to the mental health clinic due to pathological gambling and was seen for four session before requesting to have his case closed due to the applicant preferring to self-manage.

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 (serious offense) with five years, eleven months, twenty-nine days' time in service. A review of the applicant's discharge package revealed the applicant was discharged due to multiple incidents of misconduct including reckless driving, making a false official statement in addition to his special court marital conviction for wrongfully and unlawfully making and delivering 15 checks with the intent to defraud and dishonorably failing to pay debts.

Premeditated misconduct is generally excluded from the intent of liberal consideration. The repeated nature of the applicant's misconduct in making and delivering 15 checks between December 2007 and February 2008 along with the applicant's willful failure to pay rent between December 2007 and August 2008 constitutes premeditated misconduct and is excluded from the intent of liberal consideration. Based on a review of the available records, the applicant's documented misconducts occurred prior to his deployment and continued upon his return. There is no evidence a mental health condition caused or substantially contributed to the misconducts that led to the applicant's discharge.

The applicant submitted his VA rating as evidence in support of his contention. Regarding the applicant's concurrence with his VA rating, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the "snapshot in time" of the applicant's service, there is no evidence the applicant had a mental health condition that caused or mitigated the misconduct(s) which led to the applicant's discharge.

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 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 (Serious Offense)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 19 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)

