

**SUMMARY:**

The applicant was discharged on 09 September 2011 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.

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 multiple Article 15s, multiple Letters of Reprimand, and a Letter of Counseling. His misconduct included: Without authority failed to go at the time prescribed; Willfully and wrongfully destroyed two violins belonging to his spouse, the amount of damage was said to be \$770.00; unlawfully choked his spouse on the neck with his arms; threatened to slap, kick, hurt, or kill his spouse if she touched his saxophone; attempted to give an unidentified female motorcyclist his personal phone number while posted as an installation entry controller; attempted to deliver the phone number to the same motorcyclist when she was exiting the installation; Attempted to circumvent the chain of command, and by doing so, violated lawful orders of three NCOs, and commander's policy; Failed to report to mandatory flight PT; Failed to report for monthly training and retreat; Failed to report for flight pt and failed to complete h1n1 shot information; Failed to check the credentials of personnel entering base.

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 made no contentions but checked the "PTSD" box on the application.

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 any evidence otherwise, therefore, the discharge 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 checked the box for "PTSD" on the application. The applicant made no other claims or contentions, he did not submit a reason why the Board should grant his requested changes. The applicant submitted his VA rating as evidence.*

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

*There is no evidence the applicant sought or received any mental health treatment 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. There is no evidence or records to substantiate the applicant's contention that he developed PTSD disorder during his time in service. The applicant's records revealed the applicant was referred to the Family Advocacy Program(FAP) during his time in service due to allegation of physical and emotional maltreatment and he received FAP services during his time in service.*

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 with two years, six months, sixteen days' time in service. Based on the available evidence and records, the applicant's mental health condition as likely as not developed post-service. The applicant submitted his VA rating, indicating he was evaluated in 2023, twelve (12) years post discharge and reported symptoms of anxiety and depression related to current psychosocial stressors. 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. There is no evidence the applicant sought or received any mental health services during his time in service. There is no evidence the applicant exhibited or endorsed any clinically significant indicators of PTSD, or any other mental health condition, during his time in service. It is unlikely the applicant's misconducts of attempting-on two occasion- to give a motorcyclist his personal phone number or bypassing the chain of command for personnel matters were caused by or substantially impacted from a mental illness. Further, the intent of liberal consideration does not apply to misconducts involving violence or harm to others. The applicant's most serious misconduct included choking his wife and threatening to harm her if she touched his saxophone; this misconduct is excluded from the intent of liberal consideration.*

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 (Other)," and the reentry code shall remain to "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)

