

SUMMARY: The applicant was discharged on 27 January 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for a Pattern of Misconduct. 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 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 an Article 15, a vacation of suspended non-judicial punishment, and multiple Letters of Counseling and Reprimand. His misconduct included: failure to comply with leave instructions, absent without leave, drunk and disorderly conduct, failure to perform duties, and failure to obey orders.

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The applicant contended he was wrongfully discharged for refusing the COVID-19 vaccine as the mandate has been rescinded.

A review of the applicant's record revealed he refused to get the COVID-19 vaccine for which he was administratively counseled twice. In addition to the vaccine refusal the applicant had other misconduct in his record. He was refused entry onto a rotator plane by airport staff due to high level of intoxication which caused him to miss his deployment. For this misconduct he was punished under Article 15 for drunk and disorderly conduct. The applicant also had other misconduct that resulted in the issuance of Letters of Counseling and Reprimand and vacation of suspended non-judicial punishment.

The Board considered the differences in the DoD's current COVID-19 policies and those in effect at the time of the applicant's discharge. The Secretary of Defense rescinded the COVID-19 Vaccination Policy Memoranda, effective 23 January 2023, as required by the National Defense Authorization Act for Fiscal Year 2023. The DAF is no longer discharging members with general service characterizations solely for refusing to receive the COVID-19 vaccine because of service-wide policy changes.

The Board reviewed the applicant's entire service record and determined that in addition to the applicant's refusal to take the vaccine, there was other misconduct in the service record. Based on the totality of the circumstances leading to the applicant's discharge, the DRB concluded other aggravating factors precluded granting the requested relief. Therefore, based on the nature of the misconduct leading to the discharge, and current Department of Defense (DoD) and Department of the Air Force (DAF) policies, the DRB found the discharge was equitable.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade his discharge characterization. The DRB also voted unanimously to *deny* changing the discharge narrative reason and 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 equitable. Therefore, the awarded characterization of service shall remain "General," the narrative reason for separation shall remain "Pattern of Misconduct," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the board president on 14 November 2023. 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)