

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**

**SUMMARY:**

The applicant was discharged on 06 May 2020 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a Under Other Than Honorable Conditions discharge for In Lieu of Trial by Court Martial. 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 appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 14 February 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.

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 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 contends a violation of due process stemming from the unjust nature of the discharge characterization. They argue that their due process rights were compromised by a flawed investigation that failed to consider all pertinent evidence, including issues of bias and credibility pertaining to the complaining witness.

The DRB thoroughly examined the applicant's complete service record and determined that the applicant did not present sufficient evidence of impropriety or inequity to justify upgrading the discharge. The Board rejects the applicant's position on the issue of propriety. The applicant has not met the burden of persuasion that an error of fact, law, procedure, or discretion existed at the time of discharge (DODI 1332.28 E4.2.1. A).

The applicant asserts that he was denied due process during the discharge process, including the initial investigation. However, the applicant was provided counsel, notice, and an opportunity to be heard, including an opportunity to confront witnesses against him. The applicant's decision to decline that opportunity does not constitute a failure of the Air Force to provide due process. Furthermore, the applicant failed to present sufficient evidence to overcome the presumption of regularity afforded to Air Force discharge proceedings, including the presumption that Air Force courts-martials protect the due process rights of Airmen.

Applicant also asserts that his command "made a material error of discretion in relying on a fundamentally flawed AFOSI investigation." After weighing the applicant's unsworn statements against the AFOSI

investigation record, the Board was not persuaded that a material error of discretion occurred during the investigation.

The Board also rejects applicant's claim that his discharge was inequitable. The applicant asserts that the harm of the discharge characterization is inequitable at the time of issuance considering doubts regarding victim testimony. However, the applicant was afforded an opportunity to confront the alleged victim at trial and declined it.

Although the Board presumes that discharges are equitable (DODI 1332.28 E4.3), it may nonetheless grant relief even though the discharge was determined to have been otherwise equitable and proper at the time of issuance (DODI 1332.28 E4.3.3).

The Board considered applicant's quality of service and capability to serve (DODI 1332.28 E4.3.3). The Board also considered the standards put forth in the July 25, 2018, Memorandum for Secretaries of Military Departments on Guidance to Military Discharge Review Boards (the "Wilkie memo"). The Board observed that applicant presented evidence of good character, reputation, rehabilitation, and job history. However, the Board notes that the discharge upgrade is not necessary for the applicant because it is speculative whether a discharge upgrade will relieve applicant from a titling action stemming from his discharge. Furthermore, the Board notes that the alleged victim supported the discharge, and there is no evidence the alleged victim supports relief here.

The Board concluded that the current discharge characterization is equitable. An "under other than honorable conditions" discharge may be issued "[w]hen the reason for separation is based on one or more acts or omissions that constitute a significant departure from the conduct expected of enlisted Service members [including] deliberate acts or omissions that seriously endanger the health and safety of other persons." (DODI 1332.14 at 31). A general characterization is warranted "when the positive aspects of the enlisted Service member's conduct or performance of duty outweigh negative aspects." (Id. at 30).

Here, the applicant was discharged following an allegation of sexual assault supported by an AFOSI investigation. It is the opinion of the Board that sexual assault is a deliberate act that endangers the safety of other persons. Furthermore, the positive aspects of applicant's service do not outweigh the supported allegation of sexual assault. Therefore, the applicant's discharge characterization was, and remains, equitable.

The DRB voted 2 to 1 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 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*.

After a thorough review of the available evidence, to include the applicant's issues, summary of service, discharge process, the Board found the discharge was proper and equitable. Therefore, the awarded characterization of service shall remain "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "In Lieu Of Trial by Court Martial," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 4 March 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)