

SUMMARY:

The applicant was discharged on 22 July 2022 in accordance with *Air Force Instruction 36-3211, Military Separation*, with an Under Other Than Honorable Conditions discharge for In Lieu of Trial by Court Martial. The applicant appealed for an upgrade of their 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 25 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 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 that their discharge was inequitable and improper asserting that they were coerced into opting for a separation instead of facing a court-martial. The applicant states that they endured numerous personal hardships, including post-traumatic stress disorder (PTSD), depression, anxiety, and chronic physical pain. The applicant stated that there was an absence of credible evidence for a trial but in a state of distress, but they were pushed to agree to separate.

The DRB thoroughly examined the member's detailed account of their military service, particularly emphasizing mental health aspects. However, the evidence revealed no impropriety or inequity in the applicant's discharge. While acknowledging the challenges of marital and work stress, the military expects individuals to utilize available helping agencies to alleviate this pressure and perform exceptionally.

Though acknowledged, the DRB notes that these stress factors do not excuse misconduct. The review found no evidence indicating that these contentions prevented the applicant from maintaining their position in the military, thus rendering the discharge appropriate. Area Defense Counsel practice is to get the best outcome for their defendant, normally staffed with the most experienced legal counsel. Without any evidence beyond the member's account, the DRB relies on the presumption of regularity; it concluded the counsel given and the ultimate discharge received by the applicant was appropriate.

The Airman Defense Counsel, typically staffed with highly experienced legal professionals, strives to secure

the best possible outcome for their defendants. In the absence of additional evidence beyond the member's account, the DRB must rely on the presumption of regularity. The Area Defense Counsel provided the best advice, and the resulting discharge for the applicant 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 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 "PTSD" and "other mental health" on the application. The applicant contended (in part) he received and other than honorable discharge by separation in lieu of court martial "during which I suffered from several personal hardships which included PTSD, depression, anxiety, chronic physical pain; additional suicidal ideations, struggling as a single father, battling through a toxic separation/divorce, child custody, and more. On top of said hardships I also endured prosecution from OSI and Legal for said case being 'founded' even though little proof existed from the lying alleged victim."

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

There is no evidence the applicant received the diagnosis of PTSD during his time in service. There is no evidence the applicant exhibited or endorsed any clinically significant indicators of PTSD during his time in service. The applicant records revealed the applicant reported he experienced traumatic experiences prior to his time in service but denied symptoms of PTSD prior to coming under investigation at which time he reported symptoms of anxiety, panic, and depression. The applicant received the diagnosis, in service, of adjustment disorder with anxiety and depression.

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 an under other than honorable conditions character of service in lieu of trial by court martial with eight years, one month, six days' time in service. A review of the evidence the applicant submitted revealed the applicant requested a Chapter discharge in lieu of a court martial; the applicant submitted a memorandum from his Area Defense Counsel that the applicant "voluntarily left the Air Force in exchange for all charges and specifications being dismissed against him." The applicant's EPRs prior to his investigation revealed the applicant's performance was above average and superior at times. A review of the applicant's medical and mental health records revealed the applicant denied any mental health conditions and declined referrals until he came under investigation. The applicant reported symptoms of anxiety and depression related to ongoing marital issues, upcoming divorce, and pending court martial. The applicant also revealed to providers an extensive pre-service history of self-injurious behaviors and two incidences of suicidal ideation during his time in service for which he did not seek or desire mental health services.

The records revealed the applicant described symptom development in response to marital stressors and

difficulty coping with those stressors contributed to additional occupational and legal problems. The applicant made no claim or contention that a mental health condition caused or substantially contributed to the misconduct(s) that led to the applicant's discharge and contends there is no evidence to prove he committed the misconduct for which he requested the Chapter 4 discharge. There is evidence the applicant was referred to and received mental health services during his military legal proceedings. While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings. Furthermore, liberal consideration is generally not applied in circumstances involving harm to others.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated by a mental health condition, the applicant's discharge is also not outweighed.

FINDING: The DRB voted unanimously to **deny** the applicant's request to upgrade the 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 "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 "4D." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 05 February 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)

