

**SUMMARY:**

The applicant was discharged on 04 June 2015 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions (UOTHC) Discharge In Lieu of Trial by Court Martial. The applicant appealed for an upgrade of his discharge characterization and a change to the discharge narrative reason.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 27 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.

**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 indicated that his discharge character is incorrect for a number of reasons. He stressed that the circumstances in which he was discharged were suspect. In a personal statement, the applicant explained his situation in depth, indicating that he was falsely accused of sexual assault which never even reached court. The applicant explained that he was interviewed as a victim and the testimony given was used against him as the subject for the assault. He stated that at the recommendation of his Area Defense Counsel (ADC), he requested a Chapter 4 discharge. He added that upon discharge, the case still hadn't closed. The applicant checked the "PTSD" and "Other Mental Health on the application," and explained that due to the investigation he suffered mental health issues and is still affected by them today.

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 Board acknowledged the Article 31 rights violation from OSI however, it was deemed inconsequential as the applicant never went to court martial for the statements to be used against him at trial. The Board found no errors in the discharge itself. The memorandum signed by the applicant makes clear that he understood the implications of a UOTHC discharge and was willing to accept them rather than risk criminal liability. The DRB also considered the evidence regarding the victim's lack of credibility. However, the letter she wrote, "Views on Disposition on Sexual Assault Allegations..." regarding the disposition of the allegations makes clear that she was serious about the allegations she made. The statement was detailed and showed willingness to testify in a Court-Martial against him and support for a discharge characterization of no less than a UOTHC. The Board concluded that the discharge received was

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 post-traumatic stress disorder (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", "Other mental health", and "sexual assault/harassment" on the application. The applicant contended (in part) "As a result of this [sexual assault] investigation I needed to seek out mental health specialists and was prescribed highly addictive medications in order to sleep and counteract anxiety attacks."*

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

*A review of the applicant's in-service records revealed the applicant intermittently sought supportive mental health services due to the stress of his legal issues and investigation. The applicant's records revealed he was experiencing stress due to his legal issues and noted his legal problems were the primary cause of his symptoms including insomnia and poor concentration.*

*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 features of PTSD, or any other mental health condition, 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 an under other than honorable conditions character of service in lieu of trial by court martial with two years, five months, twenty-four days' time in service. A review of the applicant's discharge package reveals the basis for discharge was sexual assault. The applicant's records included additional misconduct of willfully making false statements on multiple occasions.*

*There is no evidence the applicant endorsed or exhibited any clinically significant indicators of a mental health conditions prior to coming under investigation. There is no evidence a mental health condition caused or substantially contributed to the misconduct that led to the applicant's discharge. There is evidence the applicant intermittently received mental health services during his investigation and 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.*

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 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*.

**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 "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 28 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

