

SUMMARY:

The applicant was discharged on 08 June 2021 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Entry Level Separation for Fraudulent Entry. The applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The applicant requested the board be completed based on a records only review. The Board was conducted on 28 March 2024. The applicant was represented by counsel.

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, through counsel, argued that the discharge was inequitable. The Air Force discharged the applicant for fraudulent entry after diagnosing a mental health condition the applicant failed to disclose during entrance processing. The applicant argued he did not commit fraud for two reasons. First, the applicant did not disclose a prior mental health condition because he had not been treated for the condition since childhood. Second, the applicant did not commit fraud because he had no intent to deceive the government. Specifically, the applicant argued that "a reasonable young adult would believe that the answer to a question as to whether they 'received counseling of any type' or had been 'evaluated for a treated for a mental condition' [sic] meant seeing a therapist recently, seeing a therapist consistently over a long period of time, or taking medication to control mental health issues." The applicant also asserts that his discharge can have economic and social harms, and that he has "worked hard since his discharge" as a game design instructor and retail employee.

The applicant asserted no claim of impropriety, and so the DRB did not review the discharge under its propriety standards. DODI 1332.28 E3.5.4.

The DRB determined that the applicant failed to produce substantial, credible evidence of an inequity. DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E3.2.12.6. The applicant asserts that he did not understand the medical questionnaire as asking for his long-term history of mental health treatment, but only his recent history. The applicant's arguments are unavailing. When entering the Air Force, the applicant was requested whether he "currently ha[d] or any history of: evaluated or treated for

Attention Deficit Disorder (ADD) or Attention Deficit Hyperactivity Disorder (ADHD), taken (or taking) medication, drugs, or any substance to improve attention, behavior, or physical performance, [or] received counseling of any type.” See DD Form 2807-2, *Accessions Medical History Report*. The applicant checked “no” for each question. However, the applicant later informed a mental health professional during basic training that he had a history of ADHD counseling and medication. The applicant therefore lied on his entry physical questionnaire.

The DRB determined that a reasonable young adult, indeed thousands every year, would understand the plain words of DD Form 2807 as asking whether there existed “any history of” such treatment, contrary to the applicant’s assertions that a reasonable young adult would misunderstand those clear instructions.

Additionally, the applicant requested his uncharacterized Entry Level Separation be “upgraded” to Honorable. However, this would violate current Air Force policy IAW AFI 36-3208, which states Airmen are in entry level status during the first 180 days of continuous active military service and if a separation action is initiated during this time, they will receive an entry level separation without service characterization. Therefore, the applicant’s request to “upgrade” to “Honorable” could not be approved.

LIBERAL CONSIDERATION:

Due to evidence of a mental health diagnosis and/or records documenting that one or more symptoms of mental health conditions 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.

However, a review of the applicant’s DD214, *Certificate of Release or Discharge from Active Duty*, revealed the applicant was discharged with an uncharacterized entry level separation due to fraudulent entry. The applicant, through counsel, contended the applicant “failed to report his conditions at MEPS because they had not been an issue since childhood.” To the contrary, the applicant’s in service records revealed the applicant continued to identify himself, even during his time in service, as a person “currently diagnosed with Asperger’s syndrome” and “former ADHD diagnosis”. Nonetheless, the applicant acknowledged that he did not disclose his pre-service history of mental health conditions or treatment to MEPS. The applicant’s in-service evaluator appropriately detailed to the applicant that his history of Autism Spectrum Disorder is disqualifying for general military service, per DODI 6130.03, *Medical Standards for Military Service: Appointment, Enlistment, or Induction*. There is no evidence the applicant’s discharge was improper or did not follow the requirements of Entry Level Separation IAW 36-3208. The applicant’s mental health conditions were noted to have existed prior to service (EPTS) and thus are generally considered under the intent of liberal consideration.

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. The applicant’s current employment does not alter the equity of his discharge.

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 "Uncharacterized," the narrative reason for separation shall remain "Fraudulent Entry," and the reentry code shall remain "2C." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 2 April 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>

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Attachment:

Examiner's Brief (Applicant Only)

