

**SUMMARY:**

The applicant was discharged on 15 May 2009 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions Discharge for Misconduct (Serious Offense). 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 was not represented by counsel.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 08 February 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 applicant's record of service included multiple Article 15s. His misconduct included: Without Authority, failed to go at the time prescribed to the appointed place of duty. Persuaded, encouraged, enticed, or compelled a 15 year old girl to become a prostitute, and or engage in or continue to engage in prostitution by encouraging to become or continue as a prostitute, by instructing her how to commit acts of prostitution, how to charge money, and by threatening her if she refused to commit acts of prostitution; without authority of law, lead, take, entice, carry away, or kidnap at 15 year old girl with the intent to keep, imprison, or confine her from her parents, or with the intent to hold her to commit the acts of prostitution; knowingly accept, receive levy, or appropriate money, without consideration, from a 15 year old girl which were the proceeds of prostitution activity; caused or permitted a 15 year old girl to suffer unjustifiable physical pain or mental suffering, by encouraging her to commit acts of prostitution; While deployed, receiving special pay, wrongfully used codeine, a schedule II controlled substance; as a result of previous overindulgence in intoxicating drugs, was incapacitated for the proper performance of duties.

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 stated that post-service, he was diagnosed with post-traumatic stress disorder (PTSD), and he believes that this condition was undiagnosed during service and was the cause for his discharge. He indicated that he is an outstanding member of his community and has not been in any trouble since service. Additionally, the applicant indicated an error with the separation order, as it indicated an Honorable discharge rather than the General discharge indicated on the DD214. The applicant concluded that PTSD

played a huge roll in the bad decisions made.

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 noted the difference in characterization between the AF IMT 100, *Request and Authorization For Separation*, the originally issued DD214, and the characterization given by the discharge authority. The applicant was discharged with an Under Other Than Honorable Conditions Discharge. The separation order and original DD214 contained an administrative error; however, it was immaterial and the DD214 has been corrected by the Air Force Personnel Center to reflect an Under Other Than Honorable Conditions Discharge.

#### **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 box for "PTSD" on the application. The applicant contended "I was diagnosed with PTSD after service and believe that my PTSD was the cause for discharge though it was not diagnosed until years after. During my time in service I received an Air Force good conduct medal." The applicant also contended "I am an outstanding member of my community who gives back to the youth by coaching sports have not had any troubles since separation. I believe that I deserve an upgrade because my PTSD played a huge roll [sp] in the bad decisions made prior to separation. My discharge was based on a 6-month period for which I displayed a lack of good judgment."*

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

*There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited any clinically significant features of PTSD, or any other mental health condition, during his time in service. There is no evidence or records to substantiate the applicant's contention that he developed PTSD during his time in service.*

3. Does that condition or experience actually excuse or mitigate the discharge?

*There is no evidence the applicant sought or received any mental health treatment during his time in service. There is no evidence the applicant exhibited any clinically significant features of PTSD, or any other mental health condition, during his time in service. There is no evidence or records to substantiate the applicant's contention that he developed PTSD during his time in service. A review of the applicant's records revealed the applicant's most serious misconducts- pandering, committing children into prostitution, occurred prior to his deployment.*

*There is no evidence the applicant had PTSD or any mental health condition during his time in service;*

*furthermore, the severity of the applicant's misconduct outweighs any mitigation that may have a nexus to a mental health condition. The applicant's misconducts included harm to others including child victims by forcibly placing multiple juvenile females into prostitution for his personal financial gain, and substance misuse while deployed. The applicant's misconducts also including willful drug abuse before a deployed security mission during his time in service.*

*The applicant submitted his VA rating as evidence in support of his claim. The applicant did not submit any evidence of a PTSD diagnosis or mental health treatment records. Regarding the applicant's concurrence with his VA rating, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established self-reported nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. At the "snapshot in time" of the applicant's service, there is no evidence the applicant had a mental health condition that caused or mitigated the misconduct(s) which led to the applicant's discharge.*

4. Does that condition or experience outweigh the discharge?

*Because the applicant's condition does not mitigate his discharge, it does not outweigh his discharge.*

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.

Furthermore, the Board considered that premeditated misconduct is not generally excused by mental health conditions, including PTSD, per Under Secretary of Defense for Personnel and Readiness memorandum, *Clarifying Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of their Discharge Due to Mental Health Conditions, Sexual Assault, or Sexual Harassment*, dated 25 August 2017, known as the "Kurta Memo."

**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 "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "Misconduct (Serious Offense)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 12 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)

