

SUMMARY:

The applicant was discharged on 02 June 2022 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Misconduct (Serious Offense). The applicant appealed for an upgrade of their discharge characterization, and a change to the discharge narrative reason.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 04 April 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 reenry 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 an Article 15 and a Letter of Counseling. His misconduct included repeated failure of managing a safety program and threatening to travel to a foreign country and provide a list of service members' names to a known terrorist group.

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, relayed to the Board that he had experienced a series of health problems preceding his misconduct. The applicant's father died during this time as well. The applicant contends that these issues and increased workload contributed to his declining mental health.

The applicant reported that these issues came to a head on 31 August 2021, when he allegedly communicated a threat when he was highly frustrated with his medical issues, leave complications, family troubles, and workplace disfunction. The applicant included witness statements describing his alleged threat which represent that the threat came when the applicant thought he would face punishment for scheduling complications partly attributable to another office. The witness statements indicated that his coworkers did not believe the applicant had made a genuine threat. The applicant also attributed his threat to his dark sense of humor. The applicant noted that his chain of command at one point supported his request for an Honorable discharge characterization during the discharge proceedings.

The applicant asserts that his discharge was both improper and inequitable.

Regarding impropriety, the applicant argues that his statement was only a joke, and not a true threat. As evidence, he notes that Behavioral Health, the Office of Special Investigations (OSI), and Security Forces all investigated and deemed his statement not to be a true threat. He alleges his command was improperly influenced by a similar situation involving a different airman who, upon investigation, was found to have been a true threat. He contends that his chain of command therefore committed an error of discretion by discharging him. The applicant also argues that his command made a material mistake of fact by basing his discharge in part on another improper and alleged joke occurring years before, which entered his discharge paperwork through an administrative error and was never corrected, despite assurances it would be.

Regarding inequity, the applicant argued that his service record, including awards and evaluations, illustrate that his discharge is inequitable. The applicant also attached character references, including from chaplains, a former supervisor, and colleagues.

The applicant also included excerpts of his military and health records, a personal statement, and a copy of an OSI report investigating his alleged threat.

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 contends his comments were due to stress caused by his medical issues, father's unexpected death, mother, wife and child's illness with COVID, and work stress. He believes the statements were made while experiencing stress and frustration at work.

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

The applicant had a prior history of inappropriate threatening behavior that led to a referral to anger management. He completed the anger management counseling. After making inappropriate threats regarding a terrorist group, he self-referred to mental health where he was initially diagnosed with adjustment disorder with anxiety that later changed to major depressive disorder (MDD), single episode, mild, and obsessive-compulsive disorder (OCD). He received 15 therapy sessions. No medication was prescribed consistently until 2 June 2022 for his diagnoses of OCD and MDD. The record showed the applicant received anger management again but given his history it was determined that having him in the workplace made other airmen uncomfortable.

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

The applicant's reason for his administrative discharge was related to work and personal stressors, which led to the diagnosis of adjustment disorder; however, his mental health diagnosis was not the reason for the

discharge. He had situational stressors that likely affected his judgment on this occasion as well as prior occasions. However, after attending anger management, the applicant continued to respond inappropriately when angered or stressed. The diagnosis of adjustment disorder was appropriate and valid based on his clinical presentation. Although the applicant's responses to stress appeared impulsive, there was no diagnosis or evidence of an impulse control disorder. There is insufficient evidence to support that a mental health condition excuses his discharge, however. His response to stress in certain situations likely contributed to his behavior but does not fully mitigate his discharge.

4. Does that condition or experience outweigh the discharge?

Since there is no evidence his mental health condition and/or experience may excuse or mitigate his discharge, they also do not outweigh his discharge.

PROPRIETY ANALYSIS:

The applicant advanced two theories of why his discharge was improper: first, that there was an error of discretion, and second, that there was an error of fact. The Board found neither to be persuasive.

First, the applicant alleges that his command committed an error of discretion by ignoring investigations concluding that he was not a true threat. The Board, however, found that the command did not err, because the applicant's history of threatening statements, coupled with complaints by his colleagues, materially impacted good order and discipline. This provided a sufficient basis for commander discretion. Therefore, even assuming the commander ignored these investigations (which the Board makes no determination of here), such error would not have been prejudicial because there is not "substantial doubt that the discharge would have remained the same if the error had not been made." DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E4.2.1.1.

The applicant also alleges that his command committed an error of discretion by basing its discharge decision, in part, on a prior incident involving a different airman and general sensitivity to workplace shootings. The applicant's evidence of this is a statement from a senior enlisted leader. The senior enlisted leader offered his opinion that the commander place inordinate weight on concerns from the applicant's colleagues about his behavior. While the Board appreciates the professional opinion of this senior enlisted leader, the applicant is obliged to present "substantial credible evidence" of an impropriety to rebut the Board's presumption of regularity in governmental affairs. DODI 1332.28 E3.2.12.6. The submitted statement, however, stands in isolation and relies on hearsay and speculation. This is not "substantial...evidence" capable of rebutting the presumption of regularity.

Second, the applicant alleges that his command made a material mistake of fact by referencing an unrelated statement he had made at a previous base during his discharge. The Board disagrees. The Board determined that the applicant's command did not err by considering similar statements when making a determination that he was not suitable for continued service in the military, particularly when the record shows that colleagues had been troubled by his statements. Further, even assuming that considering these statements were inappropriate, the applicant did not show that such consideration was prejudicial. The Board concluded that the command likely would have made the same decision on his discharge even without knowledge of his statement at the previous base.

The Board therefore finds that the applicant's commander did not commit a prejudicial error of discretion or fact.

EQUITY ANALYSIS:

The applicant argues that his discharge was inequitable due to his career accomplishments and character references. The applicant cites the standards set forth in 32 CFR § 865.120, which is incorporated into DODI 1332.28 E4.3.

The Board rejected the applicant's position on the issues of equity. DODI 1332.28 E3.5.6.1. The Board found that the aggravating factors of this case, including the gravity of his alleged threat and its impact to good order and discipline, outweigh the mitigating factors presented by the applicant. DODI 1332.28 E3.5.6.2.4.

The Board notes that a General (Under Honorable Conditions) characterization is appropriate when "when the positive aspects of the enlisted Service member's conduct or performance of duty outweigh negative aspects of the enlisted Service member's conduct or performance of duty as documented in their service record." DoDI 1332.14, *Enlisted Administrative Separations*, at page 30 (paragraph 3(b)(2)(b)). In contrast, an Honorable characterization is appropriate "when the quality of the enlisted Service member's service generally has met the standards of acceptable conduct and performance of duty for military personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate." *Id.*

Here, the applicant had positive performance while in the Air Force, as reflected in the character references and performance reviews, but that performance was not "so meritorious" that his "General" characterization is "clearly inappropriate."

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 and to change the discharge narrative reason. The applicant did not request a change to his reentry code, and the DRB voted unanimously to deny one.

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 Honorable Conditions – (General)," 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 18 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://afrbaportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

