

SUMMARY:

The applicant was discharged on 09 March 2020 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge In Lieu Of Trial by Court Martial. The applicant appealed for an upgrade of their discharge characterization.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 21 March 2024. The applicant was not 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 has requested an upgrade to their discharge. They contest that their discharge was inequitable. Though they chose to be discharged in lieu of the trial by court-martial, they felt at that time that they were under a lot of mental stress and were not able to advocate for themselves. They now feel they are better able to convey their story and would like the Board's consideration, as they stated that they did not assault anyone or force themselves on the victim. Because of the judgment and characterization, the applicant feels this has prevented them from thriving or contributing more to their community and others.

The DRB thoroughly examined the applicant's entire service record, and despite a comprehensive review, there was no evidence of impropriety or inequity warranting an upgrade of the discharge. Additionally, the applicant did not provide evidence to support their request to overcome the presumption of regularity. It is also important to recognize the applicant agreed and accepted the discharge characteristic in lieu of a court martial. The Area Defense Counsel's practice is to get the best outcome for their defendant, who are normally staffed with the most experienced legal counsel. The DRB, relying on the presumption of regularity, concluded that the counsel given, and the ultimate discharge received by the applicant was appropriate.

LIBERAL CONSIDERATION:

Liberal consideration does not apply to this applicant's request. The applicant checked the box for "sexual assault/harassment" on the application, however the applicant was the alleged perpetrator (not the victim) of sexual assault, therefore liberal consideration generally does not apply to misconduct that involves harm to

others. The applicant makes no claims or contentions that a mental health condition caused or mitigated the misconduct that led to his discharge. Further, the applicant denies committing the misconduct that led to his request for a Chapter 4 discharge, thus a mental health condition would not mitigate misconduct the applicant contended did not occur.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade their 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 "General," 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 17 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>

Attachment:

Examiner's Brief (Applicant Only)