

**SUMMARY:**

The applicant was discharged on 31 October 2011 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 band a change to the reentry code.

The applicant appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 19 March 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 applicant's record of service included multiple Letters of Reprimand. Their misconduct included: apprehension by off-base authorities for public drunkenness in an incident of assault, failure to go, and assault with a deadly weapon with serious injury.

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 seeks an Honorable discharge characterization and reentry code upgrade, citing the current characterization of General as interfering with their employment opportunities. In their Veteran's Affairs Statement in Support of Claim, they disclose developing post-traumatic stress disorder (PTSD) after serving in Iraq but were managing it independently. The applicant also explained extenuating circumstances surrounding their discharge; for example, the misconduct of public drunkenness in an incident of assault was the applicant's attempt to prevent their brother from drinking and driving. They state they were young when these misconducts happened. At the Board, the applicant also clarified the circumstances around the assault with a deadly weapon that caused serious injuries. They testified that they could not prevent the altercation and acted in self-defense by striking an individual with a beer bottle; they have since taken responsibility for their actions and paid their dues. They continued to emphasize their efforts to do the right thing despite facing uncontrollable circumstances and stressed their commitment to leading a law-abiding life since then. The applicant states they are now serving as a community firefighter and emergency medical technician (EMT); they provide character statements attesting to their certifications and commendations. The applicant seeks an upgrade to improve job prospects and support their family financially.

The applicant contends that his discharge was improper. He feels that he was wrongly discharged prior to

being convicted of a crime or receiving judgment for his off-base charges which he testified was lowered to 'simple assault' by the criminal court. The DRB noted that the administrative discharge process is based on a preponderance of the evidence standard (demonstrating that the proposition is more likely true than not true), in contrast to the higher standard applied in a criminal proceeding. The standard of proof in a criminal trial gives the prosecutor a much greater burden. The defendant in a criminal trial must be found guilty "beyond a reasonable doubt," which means the evidence must be so strong that there is no reasonable doubt that the defendant committed the crime.

The DRB took note of the applicant's conduct during service as documented by their performance reports, awards, decorations, and other accomplishments. The DRB recognized that the applicant's history reveals a consistent pattern of misconduct. Though there were no repeat infractions after service, the Board found that the seriousness of the applicant's willful misconduct and the impact of to two victims cannot offset the positive aspects of their conduct after service. The applicant had ample opportunities provided by the chain of command after the initial offense to put themselves in line with leadership expectation of proper conduct. Additionally, the Board noted that, as explained by the Under Secretary of Defense for Personnel and Readiness in the August 25, 2017 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," in some cases the severity of misconduct may outweigh any mitigation. Ultimately, the Board concluded that the discharge received by the applicant 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 box on the application for "PTSD". The applicant made no contentions related to a mental health condition and contended "I would like my discharge upgraded to honorable, however my main concern is my reentry code as this is interfering with my employment opportunities." The applicant submitted his VA form 21-4138 form as evidence in support of his claim in which he reported to the VA that he developed PTSD in Iraq in 2010.*

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 or endorsed 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?

*A review of the applicant's DD214, Certificate of Release or Discharge from Active Duty, revealed the applicant was discharged with a general character of service due to misconduct (serious offense) with three years, eleven months, eighteen days time in service. The applicant's records revealed he was discharged due to misconduct (serious offense) that included physically assaulting multiple people in multiple incidences in addition to failing to complete the Alcohol and Drug Abuse Prevention and Treatment (ADAPT) program. The intent of liberal consideration is generally not applied to misconducts involving harm to others or premeditated misconducts. Further, in the applicant's response to his LOR he stated "I did not throw a single punch and I definitely never struck anyone with a bottle." The applicant's records revealed the applicant denied any mental health conditions, denied having an alcohol misuse issue, and denied the severity of the misconducts during his time in service. There is no evidence the applicant endorsed or exhibited any clinically significant indicators of a mental health condition during his time in service. Liberal consideration does not apply to this applicant's request.*

*The applicant submitted his VA rating as evidence in support of his claim, in which the applicant reported to the VA ten years post discharge that he received a diagnosis of PTSD. 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 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 discharge is not mitigated, 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 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 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 "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 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>

Attachment:  
Examiner's Brief (Applicant Only)

