

**SUMMARY:**

The applicant was discharged on 27 October 2022 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General discharge for Misconduct (minor infractions). 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 28 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 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 multiple Article 15s and multiple Letter of Counseling. His misconduct included: failure to obey an order to assist with squadron beautification project and failing to render proper customs and courtesies, failing a physical fitness test, refraining from providing alcohol to minors under the age of 21, and attempting to violate a lawful order to provide a urine sample.

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 requested an upgrade to his discharge characterization based on an allegation of PTSD following the death of his mother and grandmother while he was on active duty. He stated that he is trying to put his life back together for himself and his children. The applicant provided proof of his mother's and grandmother's deaths, medical records of being knocked unconscious, and records of Air Force training he completed.

The applicant did not allege or present evidence that his discharge was improper. The DRB therefore considered his application under standards of equity, and determined that the applicant failed to provide substantial credible evidence to support an upgrade.

**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 boxes for "PTSD" and "other mental health" on the application. The applicant contended "after one year into my service, my started to get sick which eventually led to her death. Three months later my grandmother whom we had lived with passed away...I felt I really need my military family before deployment for support I would like to acknowledge and thank the military for providing me with a support dog to help me during this difficult time. Although this was a slight relief...I began to lose my desire to live and I am being evaluated for PTSD."*

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

*A review of the available records revealed the applicant was evaluated by a mental health provider one time during his deployment after reporting feeling distressed after receiving disciplinary action and being notified of being under investigation. The applicant's records revealed the applicant declined further mental health services and indicated he would seek services with the chaplain as needed. 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 Discharge from Active Duty, revealed the applicant was discharged with a general character of service due to misconduct (minor infractions) with two years, nine months, fourteen days time in service. A review of the applicant's discharge package revealed the misconducts that led to the applicant's discharge included the applicant asked another service member to provide a urine sample in place of his own for a command directed drug test, the applicant provided alcoholic beverages to minors, the applicant failed to assist in beautification and did not render proper customs and courtesies. The applicant stated in his response to his Article 15 for providing alcohol to minors that he "recently lost his mother and grandmother months prior to my birthday and me having people around on a very sensitive day and also having the emotional support that said individuals provided helped me get through that time." Based on this response, there is evidence the applicant's bereavement may explain his actions, but bereavement is generally not a mitigating mental health condition. Further, there is no evidence of a mitigating nexus between the other misconducts for which the applicant was discharged and a mental condition. It is unlikely a mental health condition cause or substantially contributed to the applicant's attempts to avoid a mandatory drug test or the applicant's failure to assist in base beautification and not rendering proper courtesies and customs.*

4. Does that condition or experience outweigh the discharge?

*Because the applicant's discharge is not mitigated or excused, 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 and found no evidence of inequity or impropriety. The Board specifically considered the following factors to be relevant to the applicant’s request and facts:

Relief is generally more appropriate for non-violent offenses than for violent offenses

Whether the punishment, including any collateral consequences, was too harsh

The aggravating and mitigating facts related to the record or punishment from which the veteran or Service member wants relief

Severity of misconduct

Evidence of rehabilitation

The Board determined that these factors did not outweigh the applicant’s misconduct of attempting to evade a urinalysis test and providing alcohol to minors. The Board noted that because the applicant was in security forces, he was well aware of laws governing his actions and entrusted with enforcing those laws. The applicant’s violation of this special place of trust is a fact aggravating the misconduct. Additionally, the Board concluded that the disciplinary actions taken against the applicant were within the bounds of Air Force disciplinary standards. Further, the applicant provided no evidence of post-discharge rehabilitation. As a result, the applicant failed to provide substantial credible evidence that his discharge was improper or inequitable.

#### **MINORITY REPORT:**

DODI 1332.28 E3.3.9. provides that a minority of the Board may include a brief statement of its views. The minority believes that relief is warranted under the Wilkie Memo.

The Wilkie Memo states: “Similarly situated Service members sometimes receive disparate punishments. . . . This can happen for a variety of lawful reasons. For example, when a unit or command finds it necessary to step up disciplinary efforts to address a string of alcohol- or drug-related incidents, or because attitudes about a particular offense vary between different career fields, units, installations, or organizations. . . . DRBs and BCM/NRs should nevertheless consider uniformity and unfair disparities in punishments as a basis for relief.”

Based on the factors above, the minority view is that relief is warranted. None of the applicant’s misconduct was violent. One of the applicant’s Article 15s was for allegedly attempting to evade a urinalysis, but his precise words appear to have been an ill-fated joke, and the applicant’s urine sample submitted the same day showed no drug use. The applicant’s other Article 15 was for allegedly providing alcohol to minors, but the applicant’s rebuttal explained that the minors were coworkers above 20 years of age, who drank alcohol provided by another person at the applicant’s house and without the applicant’s knowledge. The severity of the applicant’s misconduct was low.

However, the severity of the applicant’s punishment, including collateral consequences, was too harsh, because the record reveals no intermediary reprimands, such as an LOC or LOR, warning the applicant of the severity of his actions and providing him an opportunity to correct them. Further, even if the punishment were appropriate in his career field, and the Wilkie Memo charges the Board with considering unfair

disparities in discipline across career fields. Based on these factors, the minority view is that the applicant's discharge was inequitable.

**FINDING:** The DRB voted 2 to 1 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 the reentry code, and the DRB voted 2 to 1 to *deny* such change.

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 "Misconduct (minor infractions)," 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)

