

**AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT**

**SUMMARY:**

The applicant was discharged on 20 August 2020 in accordance with Air Force Instruction 36-3209, Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members, with an Entry Level Separation for Entry Level Performance and Conduct. 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 appeared and testified before the Discharge Review Board (DRB), without counsel, via video teleconference using Zoom on 5 March 2024. 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 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 argued that his discharge was unfair. He elaborated, pointing out that it stemmed from just one isolated incident during their 16 months of service. Furthermore, he contended that the accusations made against him lacked evidence. Additionally, the applicant claimed that the security forces' interview was a trap, as he wasn't informed of the allegations, and crucial witnesses, including the alleged victim, were never questioned. The applicant concluded that his discharge was unjust because it was based on an unproven allegation, lacked proper investigation, and denied them the opportunity to defend himself.

The Applicant contended that his discharge was improper because Security Forces failed to inform him of his rights against self-incrimination. However, this right is attached to criminal matters, and a violation of this right results in exclusion of a defendant's testimony during a criminal proceeding. Applicant was not charged with a crime, and so a failure to inform is irrelevant. Further, the DRB notes that Applicant initialed the witness statement informing him of his rights.

The Applicant also contended that he was denied an opportunity to address the allegations of assault during the discharge; that Security Forces failed to clarify contradictions in witness statements; that the commander failed to substantiate facts used against him; and that the commander arbitrarily chose not to speak with him. However, the applicant submitted a lengthy rebuttal to his discharge notification including his version of the alleged events and he did not show that his rebuttal was ignored. The Board determined that this was not sufficient to overcome the presumption of regularity in the conduct of governmental affairs. Additionally, there was no entitlement to a personal hearing before the commander or discharge authority.

However, after thorough consideration, the DRB determined that an inequity existed which warrants relief. It concluded that the commander's decision to discharge Applicant without the benefit of a Security Forces interview of the alleged victim was arbitrary and capricious. Further, the letter of notification provided by command indicated that the member and each witness was interviewed about the incident. However, the alleged victim herself was never questioned by security forces nor was she allowed the opportunity to provide evidence to the chain of command during the discharge proceedings. When questioned during the personal appearance, the alleged victim indicated that she was never assaulted in any way and the witness statements were inaccurate.

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.

(7)(r): Victim support for, or opposition to relief.

*The DRB also concluded that relief was warranted due to the alleged victim's support for relief. The alleged victim presented sworn testimony to the DRB rebutting the witness statements and explained the alleged incident. She also passionately advocated for the Applicant's requested relief. The alleged victim's testimony persuaded the DRB that the Applicant's requested relief should be granted.*

Although not bound by previous decisions, the Board reviewed the three past decisional documents highlighted by the applicant: FD-2022-00441, FD-2023-00178, FD-2023-00330. These cases involved youthful indiscretion, failure to complete training, and medical disqualification; issues that materially differ from the applicants conduct and do not offer a substantive comparison.

The Board found that the discharge under Entry Level Performance and Conduct for lack of self-discipline while in entry-level status in accordance with Air Force Instruction 36-3209 was neither improper nor inequitable but found that the victims testimony mitigated the severity of the misconduct and her support warranted partial relief of the applicant's request under the "Wilkie Memo."

**FINDING:** The DRB voted unanimously to **approve** the applicant's request to change the reentry code. It voted unanimously to **deny** an upgrade to his discharge characterization and to change the discharge narrative reason.

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 inequitable. Therefore, the awarded characterization of service shall remain "Entry Level Separation," the narrative reason for separation shall remain "Entry Level Performance and Conduct," and the reentry code shall change to "3K." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 6 March 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)