

SUMMARY:

The Applicant was discharged on 3 February 2015 per Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Under Other Than Honorable Conditions Discharge In Lieu of Trial by Court Martial. The Applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 03 May 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 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 an Article 15 for wrongful use of oxycodone, a schedule II-controlled substance.

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 their discharge, reentry code, separation code, and narrative reason. The Applicant stated they suffer from Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI) related to two deployments and engagement in combat operations in Afghanistan which caused abuse of alcohol and lapse in judgement. The Applicant contended they were further affected by a failed marriage, which left the Applicant with sole custody of the Applicant's daughter. The Applicant contends the allegations leading to a court-martial were not true and stated that they only submitted a request for discharge in lieu of court-martial because of the strain on their personal life and difficulties in learning how to deal with PTSD and TBI. The Applicant contended that their overall service was outstanding and their current service characterization of Under Other Than Honorable Conditions is excessive. The Applicant contends that their post-service conduct merits an upgrade. The Applicant submitted: DD214, VA Medical records, Awards, Certificates, and Evaluations, Letters of Recommendation, Resume, and Divorce Decree to support their application.

The DRB determined the discharge was proper and equitable. The DRB found no nexus between mental health and the misconduct that led to discharge. The Applicant denied committing the misconduct that led to his discharge [sexual assault allegation], thus a mental health condition would not mitigate misconduct the

Applicant contends he did not commit. Additionally, the Applicant was aware of the adverse nature of taking an Under Other Than Honorable Conditions discharge in lieu of Court Martial for the allegation.

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 "TBI" on the application. The Applicant contended he "suffers from PTSD and TBI" as result of combat deployments and from "being married to a person who make his life extremely traumatic".

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

There is no evidence or records the Applicant sought or received any mental health services during his time in service. There is no evidence or records the Applicant exhibited or endorsed any clinically significant indicators of PTSD during his time in service. The Applicant's records revealed the Applicant denied mental health symptoms on his annual screenings and flight physicals; there is evidence the Applicant endorsed intermittent difficulty sleeping. The Applicant's record revealed he reported to medical providers that he experienced a grenade blast at close range while deployed but denied any loss of consciousness, denied any functional or behavioral impacts from that experience during his time in service. There is no evidence the Applicant exhibited or endorsed any symptoms of TBI during his time in service.

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

A review of the Applicant's discharge package revealed the Applicant was discharged under other than honorable conditions in lieu of trial by court martial per the Applicant's request with six-year, eleven months time in service. The misconducts that led to the Applicant's discharge included charges of violation of Article 120 and violation of Article 107 with multiple specifications of sexual assault, one specification of abusive sexual assault and one specification of false official statement.

There is no evidence or records the Applicant sought or received any mental health services during his time in service. There is no evidence or records the Applicant exhibited or endorsed any clinically significant indicators of PTSD during his time in service. The Applicant's records revealed the Applicant denied mental health symptoms on his annual screenings and flight physicals; there is evidence the Applicant endorsed intermittent difficulty sleeping during his time in service; there is no evidence of a nexus between the Applicant's endorsed sleep difficulty in service and the misconducts that led to his discharge.

Liberal consideration does not apply to this Applicant's request. The Applicant, through counsel contended "The allegations leading to court-martial were not true." The Applicant denied committing the misconduct

that led to his discharge, thus a mental health condition would not mitigate misconduct the Applicant contends he did not commit. Further, liberal consideration is generally not applied to misconduct that is premeditated and involves violence against others.

4. Does that condition or experience outweigh the discharge?

There is no evidence of a nexus between the Applicant's in-service reported symptoms of sleep disruptions and the misconduct(s) for which he was discharged. Because a mental health condition does not mitigate nor excuse misconduct the Applicant contends did not occur, nor does the intent of liberal consideration apply to premeditated misconduct or misconduct involving victims, 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 his 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 "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "In Lieu of Trial by Court Martial," and the reentry code shall remain "KFS." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 15 May 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)