

SUMMARY: The Applicant was discharged on 20 September 2021 in accordance with Air Force Instruction, 36-3207, *Separating Commissioned Officers*, with a General Discharge for Unacceptable Conduct. 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 appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 25 June 2024. Their Spouse appeared as a Witness 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 a Letter of Reprimand. Their misconduct included: Intoxication and improperly touching a female subordinate.

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's counsel began their opening statement by asking the Board to consider whether one night should negate years of honorable service, which included the Applicant's achievements as a valedictorian, early promotions, and assuming command duties during the commander's deployment. The counsel then questioned the Applicant about the night of the alleged misconduct. The Applicant testified that they attended the event alone, consumed the event's signature drink, and subsequently blacked out, not remembering anything until the next day. The Applicant's spouse corroborated this, noting that such behavior was unusual, and that the Applicant had never been seen this inebriated before. The spouse further testified that the command team had not been as supportive as they could have been despite the Applicant's outstanding service and the family's sacrifices after the allegations of sexual misconduct arose. They also believed the Applicant was subjected to discrimination based on their race.

When asked about their last memory, the Applicant stated they didn't even remember eating dinner that night and didn't have a hangover the next day, suspecting something else might have been mixed into their drink. However, neither the Applicant nor their spouse sought medical attention or testing for drugs after the event. The Applicant testified that, even after being removed from a leadership position, they continued to see patients until the surgeon general deemed them unfit. The investigation, court process, and other external stressors became too overwhelming, leading the Applicant to request resignation in lieu of court-martial to prioritize their physical and mental health. The Applicant's previous case included a total of 30-character reference statements from 2021 in support of the applicant.

The DRB first acknowledges that the Air Force's standard of proof for adverse administrative actions is a "preponderance of the evidence," meaning it is more likely that a fact exists. This standard is applied when evaluating the evidence and every element of the alleged offenses. The Board also relied on the presumption of regularity in government affairs. The Applicant did not provide sufficient evidence to conclude that the offense cited in the letter of reprimand was inaccurate. The Applicant could have contested the misconduct through a trial but chose to resign. The Board's authority is not to relitigate the misconduct but to review the discharge for inequity or impropriety.

The Board did not have enough information to provide relief on the grounds of equity or propriety. The DRB has the authority to consider several factors, including candor, atonement, character references and post-service conduct, when reviewing a case for relief. With more time, the Board felt the Applicant could have presented a stronger case for relief. Unfortunately, the Board found that the Applicant lacked empathy and downplayed the victims and multiple allegations. Consequently, due to the multiple counts of sexual misconduct, the Board found the Applicant received the most favorable characterization for discharge. The Board concluded the negative aspects of the Applicant's service outweighed any of the positive contributions that the Applicant made during their Air Force career.

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," and the narrative reason for separation shall remain "Unacceptable Conduct." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 29 July 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)