

SUMMARY:

The applicant was discharged on 28 April 2010 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Misconduct (other). The applicant appealed for an upgrade of her 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 16 April 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 Article 15s. Her misconduct included maintaining an inappropriate relationship with her supervisor and violating a no contact order.

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 to the Board that her misconduct was the result of a sexual assault which caused post-traumatic stress disorder (PTSD) and her misconduct. The applicant stated that she was placed on suicide watch prior to deployment, and then removed from suicide watch in order to deploy. While deployed, she attempted suicide and was evacuated for treatment.

The applicant included a record of VA disability and mental health treatment.

During her hearing, the applicant reiterated her story about her suicidal ideations and attempt. She added details regarding alleged harassment by her supervisors and commander. When questioned by the Board members, the applicant further elaborated on past allegations of sexual assault. She stated that she sought no services following a reported assault in 2008 and did not recall whether she discussed an assault with her mental health provider. The applicant was surprised to learn that many of her post-service PTSD symptoms were not present in her military mental health record. The applicant explained that she did not view her relationship with her supervisor as being inappropriate at the time, because the supervisor was the only person she felt supported her.

The Board determined to deny the applicant's requests because she failed to present substantial credible evidence that her discharge was inequitable. DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E3.2.12.6.

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 for "PTSD" on the application. The applicant contended "while active duty I was sexually assaulted by my superior and harassed daily as a result I suffered from PTSD and could no longer do my job effectively."

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

The applicant checked the box for "PTSD" on the application and contended she experienced sexual assault and harassment during her time in service. A review of the available records revealed the applicant received mental health services during her time in service for symptoms related to family of origin issues, difficulty sleeping, and stress and anxiety related to being under investigation. The applicant's records also revealed the applicant was medically evacuated from a deployed location subsequent to a medication overdose and received inpatient mental health care followed by outpatient mental health service until her administrative separation. The applicant received the diagnosis, in service, of adjustment disorder. There is no evidence or records to substantiate the applicant's claim that she received the diagnosis of PTSD during her time in service. A review of the applicant's post-service records revealed the applicant received a diagnosis of PTSD post service related to early childhood trauma. Based on the available records for review, the applicant did not report her contended experience of sexual assault during her time in service to anyone, including anyone in the chain of command, chaplain, medical provider, SAPR, mental health provider.

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

A review of the applicant's DD214 revealed the applicant was discharged with a general character of service due to misconduct (other) with two years, six months, twenty-seven days' time in service. The applicant's discharge package was not available for review.

A review of the available records revealed the applicant received an article 15 for willfully failing to maintain a professional relationship and a second article 15 three months later for violating a no contact order by contact the same airman. A review of the applicant's prior request for relief to the board revealed the applicant requested a medical discharge due to her in service mental health condition. The board opined on the applicant's previous request that the applicant's acts of misconduct, rather than her mental health disorder, were the basis for her discharge. The records indicate the applicant was diagnosed with Adjustment Disorder. According to DoDI 1332.38, Adjustment Disorder is a condition that "may render an

individual administratively unable to perform duties rather than medically unable, and may be the basis for administrative separation.” There is no evidence the applicant made her contended experience of sexual assault known in her previous request for relief to the board. The applicant provided verbal testimony to the board that her experience of sexual assault occurred by a peer perpetrator during a night of drinking in 2008, but did not provide any additional clarifying information regarding the impact of this experience. The applicant’s application to the board contradicts the applicant’s timeline and stated “while active duty, I was sexually assaulted by my superior and harassed daily as a result I suffered PTSD and could no longer do my job effectively.”

The applicant submitted select post service medical records which revealed a diagnosis of PTSD related to early childhood trauma and provided less than one sentence of testimony with her request to the board. The applicant did not provide any clarifying information about her sexual assault experience such as when it occurred, the specific nature of the incident, and how it impacted her mental health and overall functioning in the military. It is possible the applicant experienced military sexual assault; however, the applicant’s testimony was contradictory to records available for review. The testimony the applicant provided regarding her sexual assault experience is contradictory to evidence available for review in the records which revealed multiple different accounts and timelines and perpetrators of sexual assault the applicant reported to post service providers. A review of the available in-service records did not reveal any evidence the applicant reported or disclosed in-service sexual assault during her time in service; a review of the applicant’s post service records revealed the applicant reported to providers her experiences of pre-service and post service sexual trauma.

The applicant submitted her VA rating and select post service medical records as evidence in support of her claim. Regarding the applicant’s concurrence with her VA diagnoses, 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. There is no evidence of a nexus between the applicant’s contended experience of sexual assault and the misconduct(s) that led to her discharge.

4. Does that condition or experience outweigh the discharge?

It is possible the applicant experienced military sexual assault; however, the applicant’s testimony was contradictory to her contention on her application and to records available for review. Based on the records available for review and in consideration of the applicant’s written and in-person (video conference) testimony to the board, there is no evidence of nexus between the applicant’s contended experience of sexual assault and the misconducts that led to her discharge.

EQUITY ANALYSIS:

The applicant did not submit an issue of propriety, and the Board did not rely upon any such issue. DODI 1332.28 E3.5.4.

The Board examined the applicant’s arguments and evidence under the equity factors found in DODI 1332.28, E4.3. Based on these factors, the Board rejected the applicant’s positions on issues of equity. DODI 1332.28 E3.5.6.1.

DODI 1332.28 states that the discharge is presumed equitable. E4.3. The Board must deem a discharge inequitable if there are new policies applicable granting further benefits (E4.3.1), the discharge was inconsistent with standards of discipline (E4.3.2.), or the discharge can now be seen as inequitable even though it was equitable at issuance based on specified factors (E4.3.3).

After reviewing the applicant's records and contentions, the Board determined that the equitable factors in DODI 1332.28 did not favor relief. The applicant's service record did not outweigh her misconduct. Further, the Board determined that the circumstances the applicant presented did not mitigate her misconduct. Although the applicant alleged that she was the victim of a sexual assault, the Board determined that a sexual assault did not cause her misconduct because the applicant's arguments and recollections contradicted her medical documents. Additionally, her recollections were not corroborated by these records. The Board determined that these thorough, contemporaneous medical and performance records were more persuasive than the applicant's statements to the Board because the applicant testified to alleged events that occurred fifteen years ago. Accordingly, the applicant failed to meet her burden to supply "substantial credible evidence to rebut the presumption" that her discharge was equitable. DODI 1332.28 E3.2.12.6, E4.3.

The Board also 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.

FINDING: The DRB voted unanimously to *deny* the applicant's request to upgrade her 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 (Other)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 13 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://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)