

SUMMARY: The applicant was discharged on 7 December 2022 in accordance with Air Force Instruction 36-3211, *Military Separations*, with a General discharge for Misconduct (Minor Infractions). The applicant appealed for an upgrade of his discharge characterization.

The applicant was not represented by counsel.

The applicant requested the board be completed based on a records only review.

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 reenlistment eligibility 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 made no contentions. He requested an upgrade based on the rescission of the COVID-19 vaccine mandate.

A review of the applicant's record revealed he refused to get the COVID-19 vaccine based on medical concerns. He claimed he previously had a bad reaction to the flu vaccine that caused him to have seizures. He was subsequently granted a waiver to not get the flu vaccine. He applied for a waiver for the COVID-19 vaccine based on his previous experience with the flu vaccine but was denied. There was no other misconduct in the applicant's record and his command recommend he be discharged with an Honorable service characterization, however, the separation authority discharged him with a General service characterization.

The Board reviewed the applicant's entire service record and determined that based on the nature of the misconduct leading to the discharge, and current Department of Defense (DoD) and Department of the Air Force (DAF) policies, the discharge is inequitable. In accordance with DoD Instruction 1332.28, "A discharge shall be deemed to be equitable unless:

E4.3.1. In a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from those currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

E4.3.1.1. Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

E4.3.1.2. There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

E4.3.2. At the time of issuance, the discharge was inconsistent with standards of discipline in the Military Service of which the applicant was a member.

E4.3.3. In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the DRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance.”

In this case, the Board considered the differences in the DoD's current COVID-19 policies and those in effect at the time of discharge. The Secretary of Defense has rescinded the 3 September 2021 and the 7 December 2021 COVID-19 Vaccination Policy Memoranda, effective 23 January 2023, as required by the National Defense Authorization Act for Fiscal Year 2023. The DAF is no longer discharging members with general service characterizations solely for refusing to receive the COVID-19 vaccine because of service-wide policy changes. Thus, the Board concluded the applicant's discharge was inequitable due to the changes in law and policy. Per guidance from the Secretary of the Air Force, former DAF servicemembers may petition the Air Force Discharge Review Board (AFDRB) to individually request a correction to their personnel records, including the characterization of their discharge.

The Board considered the applicant's request for discharge upgrade and determined the discharge was based solely on the applicant's refusal to take the COVID-19 vaccine. The Board substantially doubts the applicant would have received the same discharge under current policies. The Board's view is underscored by the fact that there are no other aggravating factors, such as additional misconduct present in the applicant's record apart from the refusal to take the vaccine. The applicant's record of service meets the standards of acceptable conduct and performance of duty for an honorable discharge characterization. Therefore, the Board approved the applicant's request.

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

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 change to "Honorable," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall change to "3K." The Air Force DRB (AFDRB) results were approved by the board president on 15 November 2023. 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)