

SUMMARY:

The applicant was discharged on 23 May 2023 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 her discharge characterization, a change to the separation code, and a change to the discharge narrative reason.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 04 April 2024. The applicant was not 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 reenry 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 failing to refrain from driving a vehicle while her license was suspended, a Letter of Reprimand for fraternization, and a Letter of Reprimand for driving intoxicated.

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 she is entitled to an upgrade because the Article 15 precipitating her discharge stemmed from an attempted sexual assault. She stated that she removed herself from the attempt to avoid being assaulted, but did not inform her command, authorities, or Sexual Assault Prevention/Response (SAPR) personnel of the incident. As a result, she was not considered under the Air Force's Safe-to-Report policy during her Article 15 processing.

The applicant explained that after an attempted assault, she drove herself home and had an accident with a Japanese national, resulting in minor injuries. When tested for alcohol, she tested above the legal limit set by Japanese law. She expressed remorse at the incident, but explained that she felt she had no other option that night to avoid a sexual assault. She added that while undergoing the Japanese legal proceedings, she did not let her performance in her squadron falter. She noted that she would not have been charged with driving under the influence of alcohol under American laws due to a higher legal limit.

The applicant included documents from her discharge proceedings, including a personal statement with her service history as a pilot, 16 character references, excerpts of her performance record including Officer

Performance Reports, and her defense counsel's rebuttal to her Article 15 describing the Safe-to-Report program.

Because the applicant challenged her discharge due to her commander's failure to apply the Air Force's Safe to Report policy, the Board considered the applicant's arguments on this issue under its propriety standards. Department of Defense Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, E3.5.1.3.2.

After consultation with an Air Force Judge Advocate General, the Board determined that the applicant was ineligible for the protections of the Safe to Report policy because she did not report the sexual assault attempt. The Air Force Safe to Report policy, which the applicant provided, states that the policy applies "regardless of to whom a victim makes the allegation of sexual assault." 25 Aug 2022 Memo, *Department of the Air Force Safe-to-Report Policy for Service Member Victims of Sexual Assault*, at Attachment 1, Section 1. As a result, a report is a necessary predicate to this policy applying. However, the Board determined that the applicant did not make a report. The policy therefore did not apply to her situation, and there was no "error of fact, law, procedure, or discretion . . . associated with the discharge at the time of issuance." DODI 1332.2 E4.2.1.1.

The Board also considered the applicant's case under its equitable standards, due to the applicant's contention that an attempted sexual assault mitigates her misconduct.

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 "sexual assault/harassment" on the application. The applicant contended "I am requesting that the board upgrade my character of service from an "under honorable conditions" to an "honorable" discharge, subsequent separation code, and narrative reason for separation. I am asking this due to the fact that the incident driving the separation, Non-Judicial punishment, and other repercussions stemmed from a sexual assault event in Okinawa, Japan while I was serving on active duty. Because I removed myself from the situation, I did not report the sexual assault event to my Commander, the authorities or SAPR personnel and was therefore not considered under the DAF (Department of the Air Force) Safe-to Report Policy when undergoing the nonjudicial punishment (NJP) process."

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

A review of the applicant's records revealed the applicant was referred to Alcohol and Drug Abuse Prevention and Treatment (ADAPT) on two separate occasions following two separate alcohol related misconduct incidents during her time in service. The applicant contended the misconducts that led to her

discharge originated from a sexual assault event that she removed herself from and chose not to report the incident to her command, SAPR, or authorities.

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 unacceptable conduct with six years time in service. The applicant's discharge package was not available for review.

There is no nexus between the applicant's contended experience of sexual assault and the misconducts that led to her discharge. The applicant's records revealed she received a DUI prior to her contended experience of sexual assault, resulting in multiple civilian DUI convictions and a revocation of her driving privileges in Japan. A review of the applicant's records revealed that, during the applicant's time in service, she provided nearly the same narrative for both DUIs: she denied feeling too impaired to drive, endorsed feeling tired, and stated inclement weather or driving conditions attributed to accidents that caused harm to local national.

A review of the applicant's response to her Letter of Reprimand revealed the applicant detailed the events of the evening in which she received her second DUI to her command, including the experience the applicant contends to the board was sexual assault. The applicant also stated "I can assure you that I felt no effects from the alcohol that I consumed earlier with my friends as approximately four (4) hours had passed since my last drink and felt the adrenaline flowing in my system in making my choice to remove myself from this escalating situation as soon as possible." The applicant also detailed in her response the other choices she could have made to removed herself from the situation but considered the reputations of both parties involved when deciding to drive.

A review of the applicant's medical and mental health records revealed the applicant denied any mental health symptoms during her time and service. The applicant's records also revealed the applicant denied having a substance use issue despite two instances of Driving Under the Influence (DUI), both causing injuries to foreign national personnel. The applicant's records revealed a willful disregard for the order suspending her driving privileges in a foreign country and another DUI that occurred prior to applicant's contended experience of sexual assault. The applicant's pattern of misconduct began prior to the applicant's contended experience of sexual assault. Further, premeditated misconduct and misconduct involving harm to others is generally excluded from the intent of liberal consideration thus the applicant's discharge is not mitigated or excused.

4. Does that condition or experience outweigh the discharge?

Because the applicant's discharge is not mitigated nor excused, 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 her discharge characterization, to change the discharge narrative reason, and to change the separation 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 "General," the narrative reason for separation shall remain "unacceptable conduct," and the separation code shall remain "GNC." 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)

