

SUMMARY: The Applicant was discharged on 30 June 2016 in accordance per Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions Discharge for Misconduct (Serious Offense). 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 record only review. The Board convened on 02 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 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 and counsel contested the Applicant's discharge on grounds of inequity. Counsel initially highlighted the Applicant's diagnosis in 2016 with major depressive disorder, with PTSD as a mitigating factor, and the challenges the Applicant has faced during service. Since service, the Applicant has continued to improve themselves and has completed substantial educational training and health programs to improve themselves and become a productive member of society.

The Applicant was arrested for reckless driving under the influence, resulting in a collision with a moped driver, leading to a fatality, where they subsequently fled the scene. Additionally, two years prior, the Applicant was again arrested for driving under the influence, with a blood alcohol content exceeding the legal limit, resulting in a guilty verdict. Upon thorough review emphasizing liberal consideration standards, the DRB acknowledged mitigating factors in the Applicant's case. As a result, the board concluded a General (Under Honorable Conditions) characterization, rather than an Honorable characterization, was appropriate.

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 through his attorney contends that he suffered from PTSD and Major Depressive Disorder (MDD) while in Service and based on the Hagel Memorandum of September 13, 2014, he would like his mental health condition to be considered as potential mitigating factors in his misconduct that caused his under other than honorable characterization of service. He is requesting an upgrade to an Honorable Discharge. The record showed that on December 19, 2015, the Applicant was arrested for "duty to stop at the scene of an accident involving death and DUI with death." The deceased was on a moped. The Applicant was demoted by two grades, and this was the second DUI he received (almost 3-years apart).

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

There is evidence that the Applicant suffered from PTSD and MDD during Service.

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

The Applicant was involved in a serious accident, while intoxicated, that led to a death. The reason for his excessive alcohol intake is not clear, but he was suffering from a mental health condition during service that was not diagnosed until months after the accident. It is common to have undiagnosed mental health conditions simply due to not seeking help. It is also common for persons suffering from depression, or anxiety to manage their depression with the use of alcohol (self-medicating). However, no mental health condition can excuse a behavior resulting in a loss of life, but having mental health conditions combined with alcohol use is a mitigating factor in his discharge.

4. Does that condition or experience outweigh the discharge?

Since his mental health condition was found to have caused and mitigated his discharge, his condition would also outweigh his discharge.

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.

FINDING: The DRB voted 2 to 1 to **approve** the Applicant's request to upgrade their discharge characterization. The DRB also voted unanimously to **deny** changing the discharge narrative reason and 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 inequitable. Therefore, the awarded characterization of service shall change to "General," the narrative reason for separation shall remain "Misconduct (Serious Offense)," and the reentry code shall remain "4D." 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)