

SUMMARY:

The applicant was discharged on 17 March 2020 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Entry Level Separation for Fraudulent Entry. The applicant appealed for an upgrade of his discharge characterization.

The applicant requested the Board be completed based on a records only review. The Board was conducted on 18 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 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 he refused to train following a sexual assault while in basic training. He claims this experience led to a mental illness and his discharge.

The applicant included no documents to support his contentions.

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

LIBERAL CONSIDERATION:

Due to a claim of sexual assault or sexual harassment, 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 contends he was sexually assaulted while in Basic Training and that caused him to refuse to continue training. He contends that his discharge was fraudulent.

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

There was insufficient evidence to support that the applicant experienced a sexual assault during military service and had PTSD. There was no report of a sexual assault during military service. In his application to the Board, the applicant did not offer date, time, situation, or place of assault, or who allegedly assaulted him. Of note, the applicant submitted a second application one month after the initial application and in the second application, the applicant contends again that he was sexually assaulted, and added he has PTSD. He contended that because of the assault he developed mental illnesses that caused his discharge from the service. The applicant had opportunity to report any incident that he felt impacted his mental health during the 3 March 2020 MH evaluation. However, there was no evidence that he mentioned a sexual assault. He reported symptoms of depressed mood, tearfulness, numbing, decreased enjoyment/interest, guilt and increased appetite. The examining Psychologist wrote, "These symptoms appear to be in response to abuse history in addition to other recent personal stressors." The applicant was assessed with adjustment disorder with depressed mood. He was not assessed with a diagnosis of PTSD, although he provided a childhood history of chronic physical and emotional abuse, which represents a history of trauma but not a diagnosis of PTSD during military service.

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

There is no evidence that the applicant had PTSD or was sexually assaulted during military service, however, there is evidence that his discharge was not fraudulent as claimed and was in fact based upon his failure to disclose/deny (military entrance physical exam) a significant pre-service psychiatric history that included suicide attempt, which he subsequently disclosed within six days of entry. There was no in service mental health condition that would excuse or mitigate the discharge. There is no evidence his brief military service had exacerbated or aggravated his prior mental health condition.

4. Does that condition or experience outweigh the discharge?

Since the applicant's mental health condition do not excuse or mitigate his discharge, his condition also does not outweigh his original discharge.

EQUITY ANALYSIS:

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

The Board examined the applicant's arguments and claims 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. Further, the applicant requested his uncharacterized Entry Level

Separation be upgraded to Honorable. However, this would violate DAFI 36-3211, dated 24 June 2022, which states that airmen are in entry level status during the first 365 days of continuous active military service. If a separation action is initiated during this time, entry level status airmen will receive an entry level separation without service characterization unless the Secretary of the Air Force determines that an “Honorable” characterization is clearly warranted “by unusual circumstances of personal conduct and performance of military duty.” DAFI 36-3211 at page 57 (paragraph 3.16.1.2). The applicant presented no evidence of such unusual circumstances. Therefore, the applicant’s request to “upgrade” to “Honorable” could not be approved.

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 his discharge characterization. The applicant did not request a change to his discharge narrative reason or the reentry code, and the DRB voted unanimously to *deny* such relief.

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 “Uncharacterized,” the narrative reason for separation shall remain “Fraudulent Entry,” and the reentry code shall remain “2C.” 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)