

**SUMMARY:**

The applicant was discharged on 07 April 2022 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a Under Other than Honorable Conditions discharge in lieu of trial by court martial. 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 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 a charge of destruction of property and violence against his fiancée and her child. The applicant separated in lieu of court martial.

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 the misconduct that led to his discharge, including battering his fiancée and her child, was attributable to a traumatic brain injury (TBI) the applicant suffered while in the military. He added that his irrational anger, depression, and lack of concern for consequences is a departure from his performance, which was "must promote" and "promote now" during most of his career. He stated that the fiancée initiated an assault, and his misconduct was merely self-defense.

The applicant included medical records showing his TBI which resulted from a motorcycle crash.

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 evidence of a mental health diagnosis and/or records documenting that one or more symptoms of mental health conditions 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 "TBI" on the application. The applicant contended "During the time of my recovery from TBI I was in a predicament where I was assaulted and my life was threatened." The applicant also contended "I experienced irrational anger, depression, and a lack of concern for the consequences of my actions and that isn't the standard for me."*

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

*A review of the applicant's records revealed the applicant sustained a traumatic brain injury during his time in service. The applicant's records revealed the applicant's injuries were found to be Not in Line of Duty (NILOD) by investigators due to the applicant's own misconduct by driving while intoxicated. The applicant's records revealed the applicant denied any mental health impacts from the TBI. In reviewing the applicant's request for return to duty status, the applicant denied mental health symptoms associated with his TBI, denied difficulty with emotional regulation or impulse control. A review of the applicant's medical records revealed the applicant was command referred to Alcohol Drug and Prevention Training (ADAPT) in 2014 for alcohol related incidents.*

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

*A review of the applicant's records revealed the applicant underwent a Medical Evaluation Board (MEB) subsequent to his TBI and was recommended by the Formal Physical Evaluation Board (FPEB) to be returned to duty with no limitations, although the Informal Physical Evaluation Board (IPEB) recommended the applicant be discharged under provision other than Chapter 61, Title 10, U.S.C due the outcome of the applicant's Line of Duty determination finding the applicant's injuries were the result of his own misconduct, operating a vehicle while intoxicated. The applicant made it known to medical board evaluators and his commanders that he wished to be retained in the Air Force and returned to full duty and denied any physical or mental impacts from his TBI. A review of the applicants' MEB revealed the applicant denied any mental health symptoms related to his TBI during or after his rehabilitation. The applicant's MEB evaluation revealed no impairment in judgement, insight or impulse control due to the TBI. The applicant contended his misconduct was out of character for him and due to the impacts of his TBI from a motorcycle accident; however the applicant's records revealed the applicant reported to investigators that there were previous incidents of violence in the relationship. A review of the available records revealed the applicant endorsed alcohol use at the time of his arrest and the records available for review revealed the applicant exhibited maladaptive alcohol use prior to the misconduct that led to his discharge and prior to his TBI.*

*The applicant's request is excluded from the intent of liberal consideration. The applicant's misconduct(s) included violence against other people, including children. The applicant's misconduct of damaging the victim's phone was premeditated. There is no evidence of a nexus between the applicant's TBI and misconduct(s) that led to his discharge.*

4. Does that condition or experience outweigh the discharge?

*The applicant's request is excluded from the intent of liberal consideration. The applicant's misconduct(s) included violence against other people, including children. The applicant's misconduct of damaging the victim's phone was premeditated. There is no evidence of a nexus between the applicant's TBI and misconduct(s) that led to his 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).

#### **E4.3.1. Existence of new policies:**

The Board is unaware of any new policies that would have granted the applicant further benefits, nor did the applicant identify any.

#### **E4.3.2. Consistency with Air Force disciplinary standards:**

The applicant was discharged as he requested, rather than attending a court martial for violence to a child and his fiancée. The discharge was consistent with standards of discipline.

#### **E4.3.3. Factors revealing inequity even if discharge was equitable at issuance:**

The Board also considered factors that would tend to relief even if the applicant's discharge was equitable at the time of issuance. Specifically, the Board considered the following:

##### **E4.3.3.1: Quality of Service, evidenced by:**

**E.4.3.3.1.1 Service history:** The applicant had exceptional service history up to the violent incidents, including high ratings and a "promote now" in a highly competitive squadron. He won multiple high level awards, including Non-Commissioned Officer of the Year in 2016. Despite this service history, the Board determined that the severity of the applicant's misconduct outweighed his accomplishments.

**E4.3.3.1.9 Length of service:** The applicant served for 16 years.

**E4.3.3.3.1.12. Records of NJP:** The applicant has no records of any other misconduct.

**E4.3.3.1.14. Records of periods of unauthorized absence:** The applicant was AWOL for 3 days in 2007 when he failed to return from a canceled class.

**E4.3.3.1.15. Records relating to a discharge instead of a court martial:** The applicant discharged in lieu of court martial for his misconduct. The discharge was supported by his adult victim and opposed by his child victim.

##### **E4.3.3.2. Capability to serve, evidenced by:**

**E4.3.3.2.2. Mitigating family and personal problems:** The applicant suffered major injuries from a motorcycle crash which he contends affected his judgment. However, a mental health evaluation at the time of the court martial proceedings concluded that he was able to understand his actions.

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. The Board determined that the following factors were relevant to the applicant’s case:

**6k. Relief is generally more appropriate for nonviolent offenses than for violent offenses:** The applicant’s actions were violent.

**7c. Aggravating and mitigating facts:** The applicant asserts he was defending himself. The Board determined that the applicant failed to present substantial credible evidence of this potentially mitigating fact. The Board found the evidence in the record, including the victim’s statement during the court martial proceedings, to be more persuasive than the applicant’s uncorroborated claims. The Board also relied on its presumption of regularity in government affairs to support its conclusion that the applicant was responsible for the misconduct precipitating his discharge.

**7e. Severity of misconduct:** The misconduct including violence against a child.

**7p. Character references:** The applicant’s records included a character reference from a Chief saying the incident was out of his character. The Board found this reference to be unpersuasive against the record evidence of the misconduct.

**7r. Victim support or opposition to relief:** The victims of the misconduct did not provide a statement to the board. However, during the court martial proceedings, the victims stated their desires for the applicant to be held accountable for his actions. The Board determined that the victims would therefore oppose relief in the present case as well.

The Board also observed that an Under Other than Honorable Conditions is proper “[w]hen the reason for separation is based on one or more acts or omissions that constitute a significant departure from the conduct expected of enlisted Service members of the Military Services. Examples of factors that may be considered include... deliberate acts or omissions that seriously endanger the health and safety of other persons.” DODI 1332.14 at page 31. The applicant’s misconduct readily falls into this category. The applicant’s discharge characterization was and remains equitable.

**FINDING:** The DRB voted unanimously to *deny* the applicant’s request to upgrade his discharge characterization. The applicant did not request the Board to change the discharge narrative reason or to change 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 “Under Other than Honorable Conditions,” the narrative reason for separation shall remain “In Lieu of Trial by Court Martial,” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 10 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)