

SUMMARY: The Applicant was discharged on 28 July 2023 in accordance with Department of the Air Force Instruction 36-3211, *Military Separations*, with a Under Other Than Honorable Conditions for Misconduct (Serious Offense). The Applicant appealed for an upgrade of their discharge characterization.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 06 June 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 Letter of Reprimand (LOR). His misconduct included: LOR for on or about 21 April 2021 and on or about 23 April 2021 he uploaded approximately 46 images or videos...depicted minors, or what appears to be minors, engaging in sexual activity or appearing in a state of sexually explicit nudity. These images and videos depicted children who appear to be various ages, including images and videos of minors who appear as young as three years old. Further, investigation has disclosed that he uploaded one of more of these images while he was on Shaw Air Force Base during his normal duty hours. His behavior constituted distribution of child pornography, a violation of Article 134 of the Uniform Code of Military Justice, and civilian prosecutors have retained jurisdiction in a civilian criminal case against him.

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 requested an upgrade to his Character of Service. The Applicant stated while awaiting the civilian court process in South Carolina, he was discharged. The Applicant contended he has not yet been formally convicted, proven guilty or plead guilty for any offense. The Applicant contended he was discharged in eight days after 19 years, 11 months, and 24 days of faithful service. The Applicant also contended that he was not allowed by his civilian or military counsel to be defended. The Applicant stated the current state [South Carolina] court is lagging, being advised by his civilian attorney of an estimated two-year wait. The Applicant stated he is currently at 1 year and 3 months from the original filing of charges. The Applicant mentioned he intends to utilize the upgrade to obtain veterans benefits and stated that "serving for a week shy of twenty years, I believe it to be fair and honest to allow my benefits". The Applicant also mentioned horrible anxiety and depression from the case, and the shame he's had forced upon him and his family.

The DRB determined the discharge was proper and equitable. The Applicant contended he was discharged

with shy of 20 years of faithful service, however, the Board found the Applicant was discharged for committing egregious acts on a military installation when the Applicant was in his 17th year of service. The Applicant contended they were discharged in eight days, however the Board found that the Applicant was notified of pending discharge and Board hearing action on 28 December 2022 in which the Applicant acknowledged receipt of their rights and consulted advice of an attorney, and was discharged on 28 July 2023, taking 7 months. Therefore, the Board did not find evidence of impropriety in the discharge process. Additionally, the Applicant submitted an unconditional waiver of his right to a hearing before an administrative discharge Board. The Applicant was afforded a Review for Lengthy Service Probation Board, which was unanimously denied. The Board found insufficient evidence provided by the member or in his service records to link a mental health condition that could excuse or mitigate the misconduct. Further, the Applicant's alleged misconducts related to sexual exploitation of children are generally excluded from the intent of liberal consideration due to the severity of the misconduct, the willful nature of the misconduct, and the premeditated nature of the misconduct.

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 his discharge characterization, to change the discharge narrative reason, and to change 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 proper and equitable. Therefore, the awarded characterization of service shall remain "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "Misconduct (Serious Offense)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 2 July 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)