

SUMMARY: The Applicant was discharged on 21 October 2022 in accordance with Department of the Air Force Instruction 36-3211, *Military Separations*, with a General Discharge for Misconduct (Serious Offense). The Applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason, a change to their separation code, and a change to the reentry code.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 31 May 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 an Article 15s, multiple Letter of Reprimand (LOR), and a Letter of Counseling (LOC). His misconduct included:

LOC for Failure to Report (x3)

LOR for Failure to advise supervisor of his SLTE's Termination, Falsifying an official statement

LOR for Failure to Report

Article 15 for Wrongful use of Marijuana, a Schedule I Controlled substance; Committed a Sexual act without consent; Unlawful touching; Attempt to do bodily harm; Unlawful shoving and strangulation; Touching a female Airman's chest

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 their Character of Service, Separation Code, Reentry Code, and Narrative Reason for Separation. The Applicant stated that they were an outstanding airman before arriving at their last duty station. They actively volunteered, tutored, and generally helped fellow airmen, enjoyed their role as an active unit member, and earned a Below the Zone (BTZ) promotion. However, after joining the Honor Guard at their last duty station, they stated they were accused of sexual assault. The Applicant has identified Post Traumatic Stress Disorder and other mental health issues as factors contributing to their request for an upgrade.

The DRB determined the discharge was proper and equitable. The Applicant's misconduct was not reflective of a Mental Health (MH) condition. The misconduct that led to the Applicant's discharge included harm to other people and the Applicant's records revealed a pattern of violence toward others. The severity and premeditated nature of the Applicant's misconducts exclude his case from the intent of liberal consideration. Further, the Applicant denies committing the sexual assault that led to his discharge, thus a mental health condition would not mitigate misconduct the Applicant alleges he did not commit.

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 boxes for "PTSD" and "other mental health" on the application. The Applicant contended he was an outstanding airman until he was accused of sexual assault at which time he began self-medicating with alcohol and developed mental health symptoms. The Applicant contended that his condition of bipolar disorder caused him to use alcohol and THC-8 during his time in service.

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

The Applicant's records revealed the Applicant received two sessions of supportive mental health services during his divorce. The Applicant's records also revealed approximately two years later the Applicant sought and received a single supportive mental health session near the end of his military investigation and legal proceedings. There is no evidence or records the Applicant received the diagnosis of PTSD, bipolar disorder, or any other mental health condition, during his time in service. There is no evidence the Applicant exhibited or endorsed any clinically significant features of PTSD, or any other mental health condition, during his time in service.

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

A review of the Applicant's discharge package revealed the Applicant was discharged due to sexual assault and also due to drug abuse. The Applicant contended he developed mental health symptoms in response to his investigation for sexual assault. The Applicant's records revealed the Applicant received two sessions of supportive mental health services during his divorce. The Applicant's records also revealed approximately two years later the Applicant sought and received a single supportive mental health session near the end of his military investigation and legal proceedings. While military legal proceedings can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings.

Liberal consideration does not apply to this Applicant's case. The misconduct that led to the Applicant's discharge included harm to other people and the Applicant's records revealed a pattern of violence toward others. The severity and premeditated nature of the Applicant's misconducts exclude his case from the intent of liberal consideration. Further, the Applicant denies committing the sexual assault that led to his discharge, thus a mental health condition would not mitigate misconduct the Applicant alleges he did not commit.

The Applicant submitted his VA rating as evidence in support of his claim. Based on the available evidence and records, the Applicant's mental health condition as likely as not developed post-service. Regarding the Applicant's concurrence with his VA rating, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a

given condition may improve or worsen over the life of the veteran. At the “snapshot in time” of the Applicant’s service, there is no evidence the Applicant had a mental health condition that caused or mitigated the misconduct(s) that led to the Applicant’s discharge.

4. Does that condition or experience outweigh the discharge?

Liberal consideration does not apply to this Applicant’s requests due to the severe and premeditated nature of the Applicant’s misconducts, which are excluded from the intent of liberal consideration. Because the Applicant’s discharge is neither mitigated nor excused by a mental health condition, his 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 his discharge characterization, to change the discharge narrative reason, to change the separation code, 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 “General,” 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 1 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)