

SUMMARY: The Applicant was discharged on 26 January 2015 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an "Under Other Than Honorable Conditions Discharge" for "In Lieu of Trial By Court Martial." 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 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 multiple Letters of Reprimand (LOR). His misconduct included:
LOR for driving while impaired, under the legal limit.
LOR for positive result for Alprazolam (Xanax).
LOR for failure to report to duty on time.

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 he feels his Military Sexual Trauma (MST) played a direct role in his misconduct. The Applicant described a promising military career that was disrupted in 2015 by MST. Fearing the repercussions of the "Don't Ask, Don't Tell" policy, the Applicant contended he did not seek help. The Applicant stated he began using heroin after being prescribed oxycodone for a back injury and sought to self-medicate for the mental and physical pain. The Applicant explained that after following numerous urinalysis tests, he completed a 28-day inpatient therapy program for chemical dependency and Post-Traumatic Stress Disorder (PTSD). The Applicant stated that still, the stress of an impending court trial, led to a relapse and subsequent confinement in county jail. The Applicant chose to separate in lieu of court-martial. The Applicant contended they unknowingly forfeited their benefits and spent eight years as an active addict, receiving treatment at three locations, faced two arrests, and underwent open-heart surgery to replace a heart valve damaged by drug use. Now, in active recovery, the Applicant respectfully requested an upgrade to his discharge characterization to access veteran benefits and support their continued recovery.

The DRB determined the discharge was proper. However, the Board found sufficient evidence on the basis of equity, in which the member's statements and records reflect a nexus between the in-service diagnosed PTSD (secondary to MST) and the subsequent misconduct, which partially mitigates the discharge. The

Board also considered the Applicants positive performance record leading up to his opiate and heroin addiction and that the Applicant has completed in-patient therapy programs to continue his recovery.

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 contended that he was sexually assault during his assignment at the United States Air Force Academy (USAFA) and as a result he developed PTSD. He did not report it for years out of fear of reprisal. He attempted to dismiss it from his mind through intensive workouts at the gym. After he developed back pain for which he was prescribed oxycodone, the medication provided both physical and mental relief. Running out of pills, he decided to seek a cheaper alternative to the prescribed medication and began to use heroin. In his statement, the Applicant wrote, "Quite simply, MST made me a drug addict."

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

During a mental evaluation, the Applicant disclosed he was sexually assaulted by an airman in the 2002-2004 timeframe. He described where, how, and who had assaulted him. The record showed he was diagnosed with PTSD secondary to MST.

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

There is evidence to support that the condition of PTSD could explain, but does not excuse or mitigate, the discharge. It is not uncommon for victims of sexual assaults, especially male victims, to avoid reporting out of feelings of shame, self-blame, etc. PTSD symptoms may and often do occur related to sexual assault. However, the use of a serious illegal drug such as heroin is not the usual drug for self-medicating a mental condition due to its unpleasant withdrawal symptoms. The Applicant continued to use this drug to the point of addiction and having withdrawal symptoms that eventually required long term management with an opiate agonist to prevent craving and drug withdrawal. There was no evidence to support his drug usage during service was an attempt to self-medicate as the result of MST. The Applicant noted that he sought a replacement drug for the oxycodone medication he was prescribed for back pain because that medication provided relief for both physical and mental pain/distress. He did not mention PTSD symptoms as the reason for seeking out heroin, but he believed that opiates helped him cope with the MST. After considering all the evidence, there was not sufficient evidence to support a nexus between the mental health condition/ MST that would excuse the discharge; however, there is sufficient evidence to mitigate the discharge.

4. Does that condition or experience outweigh the discharge?

Since the condition mitigates the discharge, the condition outweigh the 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 and found evidence of inequity.

FINDING: The DRB voted unanimously to *approve* the Applicant's request to upgrade his discharge characterization.

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.

The Board determined that the Applicant's service was honest and faithful, but that significant aspects of the member's conduct outweighed positive aspects of the member's military record, thus a General (Under Honorable Conditions) characterization, rather than an Honorable characterization, was appropriate.

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 Change to "Secretarial Authority," 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)