

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENT

SUMMARY:

The applicant was discharged on 11 May 2020 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Under Other than Honorable Conditions characterization 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 13 March 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 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 states that he faced challenges in his civilian life post-service which made him grow for the better. This included starting a career with a Fortune 500 company and working for the betterment of his family. He seeks an upgrade to further his education to secure a better future for himself and family.

The applicant includes multiple character references praising his work and personability. The applicant also includes a court order expunging records of his arrest for driving under the influence (DUI) of alcohol. Finally, the applicant submitted a decoration citation, a letter of appreciate received on active duty, and his DD-214.

The DRB determined that the applicant did not assert or present evidence of an error of propriety in his discharge at the time of issuance. As a result, the DRB maintains its presumption of regularity in the conduct of governmental affairs. DODI 1332.28 E3.2.12.6.

Instead, the applicant points to his positive contributions while in the Air Force and his post-service rehabilitation, which the DRB considers under standards of equity. DoDI 1332.28 E4.3. The applicant's discharge is presumed to be equitable at the time of issuance unless there is a later change in policies that would have resulted in a different outcome for the applicant, or there is an inconsistency with the discharge and normal standards of discipline in the Air Force. DODI 1332.28 E4.3.1, E4.3.2.

The DRB determined that there are no new policies that would have resulted in a different outcome than the one the applicant has currently. Moreover, while the applicant presents evidence indicating a DUI was

expunged in the civilian court, there's no evidence to indicate that this single DUI is sole basis for the discharge. According to the available records, the applicant was furnished a UOTHC discharge in lieu of Courts Martial and it is highly unlikely that a single now-expunged DUI formed the sole underlying basis for the Court Martial charges or the administrative discharge. Therefore, while we do note the civilian court disposed of the DUI, the Board was not convinced that this alone renders the discharge improper because there is no documentary evidence indicating the DUI was any part of the basis for the action. Should the applicant provide documentation describing the chargers preferred, or copies he has in his possession of the administrative discharge package, the Board would be able to determine whether the civilian court's action on this DUI is sufficient to rebut the presumption of regularity which dictates that it should be presumed the discharge was carried out in accordance with policies and procedures in effect at the time in accordance with DODI 1332.28 E3.2.12.6.

The DRB also considered whether the discharge is inequitable based on new evidence, even though it was equitable at issuance. DODI 1332.28 at E4.3.3. The DRB considered multiple equity factors provided in DODI 1332.28 and 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 DRB considered the applicant's records of performance, including the decoration submitted with the application. After considering the applicant's evidence and records in light of these factors, the DRB concluded that relief is not warranted. The applicant's career records and references are generally positive but not so outstanding as to counterbalance the severity of a DUI.

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 "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 11 May 24. 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)

