

SUMMARY: The Applicant was discharged on 29 November 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a General discharge for Misconduct (Minor Infractions). 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 the following documented misconduct leading up to their discharge:

- Letter of Reprimand (LOR) for violating UCMJ Article 92; disobeyed direct order by breaking a No Contact Order.
- LOR for violating UCMJ Article 134; adultery.

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 claimed that before their discharge, they had been struggling with depression and had contemplated suicide. Despite informing their leadership, they felt that no action was taken to help them, and they were not sent to mental health or had their weapons taken away. As a result, they attempted to take matters into their own hands but were caught and placed in jail. While in jail, they attended mental health appointments that they felt were not helpful, as their therapist suggested taking plea deals. The Applicant was in jail for three months, and subsequently discharged.

The DRB determined the discharge was proper and equitable. The Applicant contended that they were going through stress from their soon-to-be ex-wife and the death of their brother, which led to them shutting down and not caring about anything. The Applicant was evaluated by a psychiatrist upon apprehension as part of their pre-trial confinement assessments and participated in 10 mental health sessions during their time in confinement. The Applicant received the diagnosis of adjustment disorder with disturbance of mood and conduct. However, there is no evidence a mental health condition caused or mitigated the misconduct(s) which led to the Applicant's discharge. The Applicant displayed externally via interpersonal violence, and there is a lack of evidence and testimony from the member on why the misconduct occurred. 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.

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 box for "other mental health" on the application. The Applicant contended "prior to my discharge I was battling depression and I wanted to kill myself. I told my leadership what I was dealing with at the time and they truthfully didn't do anything for me. They didn't take any of my weapons from me or send me to mental health so I went on the road to put matters into my own hands. They ended up catching me before I ended my life and their solution to my mental health was placing me in jail. While I was in jail I would attend mental health appointments but didn't really help because my therapist would suggest I take plea deals. I ended up doing 3 months and was discharged.

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

A review of the Applicant's records revealed the Applicant was evaluated by a psychiatrist upon apprehension as part of their pre-trial confinement assessments and participated in 10 mental health sessions during their time in confinement. During confinement, the Applicant received the diagnosis of adjustment disorder with disturbance of mood and conduct. A review of the Applicant's annual and arming use of force screeners in the years prior to their confinement revealed the Applicant denied any mental health symptoms and declined the need for referrals for any psychosocial services.

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

A review of the Applicant's DD214 revealed the Applicant was discharged with a general character of service due to misconduct (minor infractions) with five years, two months, four days time in service. The Applicant's discharge package was not available for review. A review of the Applicant's records revealed the Applicant's AFSC and authority to bear arms were revoked due to misconduct. The Applicant stated in their rebuttal to their Enlisted Performance Report that they were going through a "tremendous amount of stress and drama mainly from my soon to be ex-wife." The Applicant also referenced the death of their brother as a stressor. A review of the available records revealed the Applicant informed their leadership they were experiencing stress and suicidal thoughts and was encouraged to go to the mental health clinic immediately as a walk-in. Based on a review of the available records, the Applicant did not go to mental health as they indicated to their leadership they were going to do and instead left base and left the local area, resulting in the Applicant being confined upon return due to his flight risk status, violence, and history of violating no contact orders. A review of the Applicant's mental health records from their time in confinement revealed the Applicant endorsed frustration and anger related to children's mothers and associated relational and legal problems.

The Applicant's records revealed the Applicant described symptom development in response to relational stressors and difficulty coping with stressors contributed to additional occupational and legal problems. There is no evidence a mental health condition caused the misconduct(s) that led to the Applicant's discharge. There is evidence the Applicant exhibited and endorsed poor coping skills and anger

management issues which may explain the Applicant's misconduct but that does not constitute a mental health condition and does not mitigate the misconduct(s) that led to the Applicant's discharge.

The Applicant submitted select VA records as evidence in support of his claim. Regarding the Applicant's concurrence with his VA diagnoses and ratings, 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 a mental health condition caused or mitigated the misconduct(s) which led to the Applicant's discharge.

4. Does that condition or experience outweigh the discharge?

The Applicant's condition or experience is not mitigated, it does not outweigh the misconduct that led to the Applicant's 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 no evidence of inequity or impropriety.

FINDING: The DRB voted unanimously to **deny** the Applicant's request to upgrade their 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.

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 (Minor Infractions)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 4 August 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://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)