

SUMMARY: The Applicant was discharged on 23 March 2023 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 16 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 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 from Under Other than Honorable Conditions. The Applicant contended his request is due to the charges were unjust and he was charged with things he did not do. The Applicant contended he was “framed of things that were even proven to be not true”. The Applicant stated he would love a chance to start again. The Applicant stated he was in a relationship with someone, and it didn’t work out, “so the next thing I know I was under investigation and they found zero proof of the accusations but still wanted to court martial me.”

The DRB determined the discharge is partially mitigated due to a finding of impropriety by the Board. IAW DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, “E4.2.1. A discharge shall be deemed proper unless, in the course of discharge review, it is determined that: E4.2.1.1. An error of fact, law, procedure, or discretion exists associated with the discharge at the time of issuance; and that the rights of the Applicant were prejudiced thereby (such error shall constitute prejudicial error if there is substantial doubt that the discharge would have remained the same if the error had not been made).” The Board determined that an error of fact occurred as multiple evidentiary issues outlined in the Applicant’s Area Defense Counsel (ADC) memo stated, “there is serious question as to whether the visual image is a visual image of sexually explicit conduct.” Furthermore, the Board found the lack of evidence was supported by witness statements. The Board also concurred with ADC of any intention or action to deprive, defraud or appropriate with regard to the charged offense of wrongful appropriation of a credit card. The Board determined the misconduct would not have risen to the level of a Court Martial and the UOTHC was too harsh. The Board recommended the Applicant pursue a personal appearance application to provide the Board with further evidence and testimony if additional upgrade is being sought.

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.

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 impropriety.

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.

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 improper. Therefore, the awarded characterization of service shall Change to "General," the narrative reason for separation shall remain "In Lieu of Trial by Court Martial," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 3 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)