

SUMMARY: The applicant was discharged on 14 July 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Entry Level Separation for Failed Medical/Procurement Standards. The applicant appealed for an upgrade of his discharge characterization, a change to the discharge narrative reason, 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 13 June 2024. The applicant was 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 no misconduct.

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, separation code, reentry code, and narrative reason. Through counsel, the applicant explained that he discovered he had a specified disease during basic training. He was then discharged for failing medical/procurement standards due to having this disease.

The applicant's counsel expressly and exclusively argued that he deserved relief due to an impropriety, and argued that his discharge was improper due to an error of fact. The applicant's counsel specified the error as being that the applicant no longer has the diagnosed disease following post-discharge treatment. The applicant specifically requested an honorable characterization, secretarial authority narrative reason, and an RE-1 reentry code.

The applicant included his enlistment documents, his DD214, the notification he received of having the diagnosed disease, a letter from a doctor stating he no longer has the disease, a fact sheet about the disease, and additional medical documents.

The applicant's counsel cited paragraph E4.2.1.1. of DODI 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, which sets forth the standards the Board applies in cases of alleged improprieties.

DODI 1332.28 E4.2.1.1. requires that "a discharge shall be deemed proper unless...it is determined that [an] error of fact, law, procedure, or discretion exists associated with the discharge at the time of issuance."

Regrettably, the applicant's counsel omitted the underlined portion in the excerpt above in the applicant's brief. The Board determined that there was no error of fact at the time of issuance because the applicant did, in fact, have the specified disease when he was discharged, and was discharged only because of the disease. The fact that the applicant has now been cured of that disease cannot change the fact that existed on 14 Jul 2022.

DODI 1332.28 E4.3.3 empowers the Board to deem a discharge inequitable "even though the discharge was determined to have been otherwise equitable and proper at the time of issuance" "based upon consideration of...other evidence presented to the DRB." One such factor is "matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily." E4.3.3.2.2.

Unfortunately, the applicant's counsel only argued that an impropriety existed. DODI 1332.28 E3.5.1.3.2. states that "if an applicant identifies an issue as pertaining to the propriety of the discharge...the DRB shall consider the issue solely as a matter of propriety." Accordingly, the Board is forced to apply its propriety standards to the applicant's case, and is prohibited from applying its equity standards.

In conclusion, the Board determined that the applicant's cure *after* discharge does not show an error existed *at the time of* discharge. Therefore, the discharge was proper. The Board can consider the applicant's case no further due to the counsel's decision to forego an equity argument.

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 "Uncharacterized," the narrative reason for separation shall remain "Failed Medical/Physical Procurement Standards," and the reentry code shall remain "4C." The Air Force DRB (AFDRB) 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)

