

SUMMARY: The Applicant was discharged on 5 October 2016 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 and a change to the discharge narrative reason.

The Applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 06 August 2024. No witnesses were present to testify on the Applicant’s behalf.

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 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, with Counsel, stated they served in the Air Force and built an excellent performance record. The Applicant contended that their career was derailed by allegations of child maltreatment following an incident where their niece was injured while under their care.

The Applicant requested their discharge be upgraded based on clemency outlined in the Department of Defense’s (DoD) 2018 Wilkie Memorandum, contending that the memorandum recognizes that factors such as post-discharge good conduct and achievements, honorable service, acceptance of responsibility, the passage of time, character letters, and other mitigating factors may warrant an upgrade in discharge in the interests of fundamental fairness and equity.

The Applicant contended that they’ve demonstrated outstanding post-service conduct and has mitigating factors surrounding the incident that led to their adverse discharge in favor of upgrading their discharge in the interest of clemency.

The Applicant stated they’ve earned a certificate in general business, an associate’s degree, and certificates in health, wellness, and public safety. The Applicant has also been working towards becoming a Journeyman Electrician and has accumulated over 7,000 hours as an apprentice and has remained dedicated to raising a family. During their personal appearance, the Applicant maintained their innocence in the allegation of child maltreatment.

The DRB found that the Applicant was discharged because their then two-year-old niece was injured while under their care. The incident resulted in conflicting determinations about the cause of the child’s injuries

and the Applicant was ultimately cleared by the Air Force convened Central Registry Board. However, court-martial charges were preferred against the Applicant, and the Applicant made the decision to request discharge in lieu of court-martial proceedings. The Board found a preponderance of evidence provided by the Applicant through testimony and documentary evidence, opining that it is likely they did not commit the misconduct for which they were discharged.

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 and impropriety.

- a. It is consistent with military custom and practice to honor sacrifices and achievements, to punish only to the extent necessary, to rehabilitate to the greatest extent possible, and to favor second chances in situations in which individuals have paid for their misdeeds.
- b. Relief should not be reserved only for those with exceptional aptitude; rather character and rehabilitation should weigh more heavily than achievement alone. An Applicant need not, for example, attain high academic or professional achievement in order to demonstrate sufficient rehabilitation to support relief.
- c. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.
- d. Evidence in support of relief may come from sources other than a veteran’s service record.
- e. A veteran’s or service member’s sworn testimony alone, oral or written, may establish the existence of a fact supportive of relief.
- f. Changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome than the Applicant received, may be grounds for relief.
- g. The relative severity of some misconduct can change over time, thereby changing the relative weight of the misconduct in the case of the mitigating evidence in the case.
- h. Requests for relief based in whole or in part on a mental health condition, should be considered for relief on equitable, injustice, or clemency grounds whenever there is insufficient evidence to warrant relief for an error or impropriety.
- i. Evidence submitted by a government official with oversight or responsibility for the matter at issue and that acknowledges a relevant error or injustice was committed, provided that it is submitted in his or her official capacity, should be favorably considered as establishing a grounds for relief.
- j. Similarly situated service members sometimes receive disparate punishments. A service member in one location could face court-martial for an offense that routinely is handled administratively across the service. While a court-martial or a command would be within its authority to choose a specific disposition forum or issue a certain punishment, DRBs should nevertheless consider uniformity and unfair disparities in punishments as a basis for relief.
- k. Relief is generally more appropriate for non-violent offenses than for violent offenses.

1. Changes to the narrative reason for a discharge and/or upgraded character of discharge granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, the payment of past medical expenses, or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded character.
 - a. The Applicant's candor. The Board found the Applicant's testimony to be truthful and aligned with the events and documentation found in their records.
 - b. Whether the punishment, including any collateral consequences, was too harsh. The Board opined that the Applicant did not commit the alleged misconduct, therefore, the punishment was found to be too harsh.
 - c. The aggravating and mitigating facts related to the record or punishment from which the veteran or Service member wants relief. There were no witnesses to the misconduct and the Applicant was ultimately cleared by the Air Force convened Central Registry Board. Their recollection and testimony of the event remained consistent and found to be truthful.
 - d. Positive or negative post-conviction conduct, including any arrests, criminal charges, or any convictions since the incident at issue. The Applicant had one incident on-base which resulted in damage to a wall. However, charges in this incident were dropped.
 - e. Severity of misconduct. N/A
 - f. Length of time since misconduct. It has been more than eight years since the Applicant had any misconduct.
 - g. Acceptance of responsibility, remorse, or atonement for misconduct. N/A
 - h. The degree to which the requested relief is necessary for the Applicant. The Applicant wanted to be cleared of the misconduct and not have it weighing over them and their family.
 - i. Character and reputation of Applicant. The Applicant has a positive record in both character and reputation as demonstrated in their military service records and post service records provided with their application.
 - j. Critical illness or old age. N/A
 - k. Meritorious service in government or other endeavors. The Applicant has a certificate in general business, an associate's degree, and certificates in health, wellness, and public safety.
 - l. Evidence of rehabilitation. Resilient and continued working and caring for family.
 - m. Availability of other remedies. None
 - n. Job history. The Applicant continued working without a gap in employment to include a job on-base after discharge. The Applicant is working towards becoming a Journeyman Electrician. The Applicant has accumulated more than 7,000 hours as an apprentice and has remained dedicated to raising a family.
 - o. Whether misconduct may have been youthful indiscretion. N/A
 - p. Character references. The Applicant provided positive character references with their application.
 - q. Letters of recommendation. Strong letters of recommendation were provided by the Applicant.

r. Victim support for, or opposition to relief, and any reasons provided. The Applicant is still married to the sister of the child's mother and maintains a positive relationship with the mother and child involved in the alleged maltreatment. The mother of the child has written a positive character reference letter for the Applicant, stating that they do not believe the Applicant committed the alleged crimes.

FINDING: The DRB voted unanimously to *approve* the Applicant's request to upgrade their 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 seek relief before the Air Force Board for Correction of Military Records (AFBCMR) in accordance with DAFI 36-2603, *Air Force Board for Correction of Military Records*.

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 and inequitable. Therefore, the awarded characterization of service shall Change to "Honorable," the narrative reason for separation shall Change to "Secretarial Authority," and the reentry code shall Change to "3K." The DRB results were approved by the Presiding Officer on 3 September 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)