

SUMMARY: The Applicant was discharged on 5 December 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions discharge for Misconduct (drug abuse). 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 8 August 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: Summary Court Martial, wrongfully used lysergic acid diethylamide (LSD), a Schedule I controlled substance. Plea: Guilty; Finding: Guilty; and an Article 15 consumed alcohol while under the legal drinking age of twenty-one.

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 stated they were sexually assaulted and suffered from Post Traumatic Stress Disorder (PTSD). The Applicant provided the following documents in support of their claim: VA Disability Rating, Buddy Letters, Medical Documents, and Military Personnel File (to include legal documents).

The DRB found that the Applicant was discharged for drug abuse. However, the Board determined that there was evidence that the Applicant's maladaptive substance use may have been related to their experience of sexual assault; therefore, providing a nexus to their misconduct and mitigating the discharge. The Board determined that a General (Under Honorable Conditions) characterization was more 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 boxes for "PTSD", "other mental health", and "sexual assault/harassment" on the application. The Applicant contended "I was sexually assaulted and suffering from PTSD."

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

A review of the Applicants' in-service records revealed the Applicant filed a restricted and later unrestricted report regarding their sexual assault experience, which occurred approximately four years prior to their discharge. A review of the Applicant's medical records revealed the Applicant was evacuated from a deployed location due to experiencing distressing mental health symptoms and received inpatient and outpatient mental health services upon their return from the deployed location.

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 an under other than honorable character of service due to misconduct (drug abuse) with five years, one month, five days time in service. The Applicant's submitted a lengthy statement to the discharge authorities at the time of their discharge detailing their sexual assault experience and the impacts of their sexual assault experience. The Applicant's discharge package contained multiple memoranda from review and discharge authorities acknowledging the Applicant's in-service experience of sexual assault. The Applicant's commander stated "I am aware that [Applicant] has alleged being a victim of sexual assault as outlined in their[dated] memorandum. I took this into account, along with their entire military record, when I recommended they be discharged with a UOTHC service characterization." Based on review of the available records, the Applicant's contended experience of MST occurred in/around May 2018. There is evidence the Applicant's pattern of maladaptive substance use began after this time and lasted approximately six months. A review of the Applicant's mental health records during their time in service that indicated the Applicant was experiencing marked distress related to their assault and pending legal problems. There is evidence the Applicant's experience of MST and their mental health condition were considered during the Applicant's discharge process and may have mitigated their discharge.

4. Does that condition or experience outweigh the discharge?

In considering the totality of the Applicant's time in service, the impact of their claimed MST experience and its impact on their mental health and functioning in the military, along with the nature and severity of their misconduct the Board concurred the Applicant's experience of MST outweighed their discharge characterization of under other than honorable conditions.

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.

FINDING: The DRB voted unanimously to *approve* 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 inequitable. Therefore, the awarded characterization of service shall Change to "General," the narrative reason for separation shall remain "Misconduct (drug abuse)," and the reentry code shall remain "2B." 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)