

SUMMARY: The Applicant was discharged on 08 January 2015 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Pattern of Misconduct. The Applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason, and a change to the reentry code.

The Applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 11 June 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 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 a Letter of Reprimand for assault.

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 their characterization of separation, reentry code, and narrative reason, noting that PTSD was a mitigating factor for their misconduct. During the hearing, the Applicant testified about his expectations for marriage and fatherhood, explaining that it became overwhelming. He asked for a divorce, which his wife did not handle well. Although he acknowledged there was back and forth, physical contact was minimal.

The Applicant mentioned receiving paperwork and a referral for counseling, but his wife only attended one session. The Applicant stated that this pattern persisted throughout their relationship, even during her pregnancy and his return from deployment. He described how his wife would become aggressive during confrontations, accusing him of infidelity or leaving. He asserted that his physical contact was never assault but in self-defense, citing an incident where he pushed her away and left to prevent escalation. The Applicant further testified that despite being arrested, the charges were dismissed. However, he stated he was still discharged from the military due to these incidents, despite feeling he had more to contribute to his career.

The DRB found the Applicant was discharged due to discreditable involvement with civilian authorities, specifically an assault on his former spouse, which rendered him unsuitable for further military service. The administrative discharge was based on a preponderance of evidence, a lower standard than the "beyond a reasonable doubt" requirement in criminal trials. The DRB determined no evidence from records or the Applicant's testimony to support an upgrade. The Applicant failed to show a clear connection between their

mental health condition and the mitigation of their misconduct. Thus, the DRB concluded that the discharge was neither improper nor inequitable.

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, through counsel, checked the box for "PTSD" on the application. The Applicant, through counsel, contended "This is a request for a hearing before the DRB. This case has mental health as mitigating factor. Equity to follow upon hearing date." No other information, evidence, records, or contentions were submitted.

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

There is no evidence the Applicant sought or received any mental health treatment during his time in service. There is no evidence the Applicant exhibited or endorsed any clinically significant features of PTSD, or any other mental health condition, during his time in service. There is evidence the Applicant was command referred, on two occasions, to the Family Advocacy Program (FAP) as the alleged perpetrator of intimate partner violence.

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 a pattern of misconduct with three years, eight months, twenty days time in service. Regarding the misconduct that led to the Applicant's discharge, a review of the Applicant's discharge package revealed the Applicant's commander noted "[b]efore recommending this discharge, attempts were made to rehabilitee [the Applicant] as evidenced by the actions listed in the notification letter. [the Applicant] has allegedly commit an assault on his now former spouse in May 2013 and again in November 2014. After the first incidence in May 2013, the unit has worked diligently in trying to assist [the Applicant] with his suspected violent behavior. Specifically, he was sent to Family Advocacy in an attempt to correct his aggressive behavior evidently without success." The intent of liberal consideration is generally excluded from misconduct involving victims and also from premeditated misconduct. A review of the Applicant's previous request to the Board found the Applicant made no mental health contentions.

4. Does that condition or experience outweigh the discharge?

At the "snapshot in time" of the Applicant's service, there is no evidence the Applicant had a mental health condition that caused or mitigated the misconduct(s) which led to the Applicant's discharge. Because the Applicant's discharge is not mitigated it is also not outweighed.

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, 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 proper and equitable. Therefore, the awarded characterization of service shall remain “General,” the narrative reason for separation shall remain “Pattern of Misconduct,” and the reentry code shall remain “2B.” The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 10 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)