

**SUMMARY:**

The applicant was discharged on 21 March 2022 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with a General Discharge for Misconduct (serious Offense). 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 requested the Board be completed based on a record only review. The Board was conducted on 22 March 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 multiple Letters of Reprimand. Their misconduct included: Refusal to receive the initial dose of the COVID-19 vaccine.

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 that they are requesting an upgrade in their discharge as they believe their mental health was a mitigating factor for their misconduct. During the time of the discharge, the applicant stated they were in the middle of a mental health episode and became paranoid and distrustful. They could not accept the COVID-19 vaccine. However, they state that this was due to their isolation and worsening mental health. They asked the Board to consider these factors when reviewing their case.

The Board reviewed the applicant's entire service record and determined that based on the nature of the misconduct leading to the discharge, and current Department of Defense (DoD) and Department of the Air Force (DAF) policies, the discharge is inequitable. In accordance with DoD Instruction 1332.28, *Discharge Review Board (DRB) Procedures and Standards*, "A discharge shall be deemed to be equitable unless:

E4.3.1. In a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from those currently applicable on a Service-wide basis to discharges of the type under consideration provided that:

E4.3.1.1. Current policies or procedures represent a substantial enhancement of the rights afforded a respondent in such proceedings; and

E4.3.1.2. There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

E4.3.2. At the time of issuance, the discharge was inconsistent with standards of discipline in the Military Service of which the applicant was a member.

E4.3.3. In the course of a discharge review, it is determined that relief is warranted based upon consideration of the applicant's service record and other evidence presented to the DRB viewed in conjunction with the factors listed in this paragraph and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance.”

In this case, the Board considered the differences in the DoD's current COVID-19 policies and those in effect at the time of discharge. The Secretary of Defense rescinded the 24 August 2021 and the 30 November 2021 COVID-19 Vaccination Policy Memoranda, effective 10 January 2023, as required by the National Defense Authorization Act for Fiscal Year 2023. The DAF is no longer discharging members with general service characterizations solely for refusing to receive the COVID-19 vaccine because of service-wide policy changes. Thus, the Board concluded that involuntary separation actions were taken in accordance with valid lawful policy in effect at the time, however, the applicant's discharge is now inequitable due to the changes in law and policy. Per guidance from the Secretary of the Air Force, former DAF service members may petition the Air Force Discharge Review Board (AFDRB) to individually request a correction to their personnel records, including the characterization of their discharge.

The Board considered the applicant's request for discharge upgrade and determined the discharge was based solely on the applicant's refusal to take the COVID-19 vaccine. The Board substantially doubts the applicant would have received the same discharge under current policies. The Board's view is underscored by the fact that there are no other aggravating factors, such as additional misconduct present in the applicant's record, apart from the refusal to take the vaccine. The applicant's record of service meets the standards of acceptable conduct and performance of duty for an honorable discharge characterization. Therefore, the Board approved the applicant's request.

#### **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 PTSD or 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 box for "PTSD" on the application. The applicant contended "During the time of my discharge I was in the middle of a mental health episode where I became very paranoid and distrustful. Ultimately I was discharged for not accepting the COVID vaccine, but I feel the cause of all this was due to isolation and worsening mental health."*

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

*A review of the applicant's in-service records revealed the applicant requested to be started on medications during his time in service for symptoms of anxiety. The applicant was referred to mental health services and started on medications per his request but did not follow-up with referrals. A review of the applicant's annual health exams and separation health exam revealed the applicant denied mental health symptoms or conditions at the time of his discharge.*

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 misconduct (serious offense) with three years two months, twenty days time in service. A review of the contentions made by the applicant at the time of his discharge is inconsistent with the contentions made by the applicant to the discharge Board.*

*The applicant contended he was "in the middle of a mental health episode where I became very paranoid and distrustful" at the time of his discharge. The applicant did not submit any records or evidence to substantiate this claim. A review of the applicant's in service records revealed the applicant did not contest his discharge and made it known to command that his refusal to follow orders to get vaccinated were guided by the adverse effects his mother purportedly experienced after receiving the vaccine. The applicant contended to command that he promised his mother he was not receive the COVID-19 vaccine. The applicant stated in his response to discharge notification "I have served honorably aside from my vaccination refusal, which was wholly based on my mother's experience." Based on the available records, there is no evidence or records to substantiate the applicant's contention that he developed a mental health condition during his time in service that caused or substantially contributed to the applicant's discharge.*

4. Does that condition or experience outweigh the discharge?

*Because the applicant's discharge is not mitigated or excused by a mental health condition, the applicant's discharge is also not outweighed by a mental health condition.*

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 in regards to Liberal Consideration.

**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.

**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 "Honorable," the narrative reason for separation shall change to "Secretarial Authority," and the reentry code shall change to "3K." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 18 April 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)