

SUMMARY: The Applicant was discharged on 5 November 2015 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions character of service for Misconduct (Civil Conviction). The Applicant appealed for an upgrade of their character of service.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 19 September 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:

- Letter of Reprimand (LOR) for multiple abusive behaviors towards humans and animals. Found guilty of felonious cruelty to animals.
- Letter of Counseling (LOC) for failing to provide adequate supervisory oversight.
- LOC for failing official Fitness Assessment.
- LOC for failing to document tool control.
- LOC for failing to attend scheduled Chemical, Biological, Radiological, and Nuclear appointment.
- Article 15 for remaining absent approximately seven days.

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 contends that they were discharged without receiving necessary medical support for their Post Traumatic Stress Disorder (PTSD), which resulted from their deployment. They believe that their dedication to duty and service and their deployment entitles them to a fair assessment of the circumstances surrounding their discharge. They argue that recognizing their PTSD and providing appropriate care is essential for their well-being and ability to contribute positively to society.

The Applicant was found guilty of cruelty to animals for shooting a dog that later died as a result of the gunshot wounds. The Applicant had additional misconduct documented in their record to include violence to their spouse and dereliction of duty. Due to the nature of the Applicant's misconduct, their service was characterized as UOTHC.

The DRB determined that there was not sufficient evidence of a mental health condition that excused or mitigated the Applicant's misconduct. The Board found the discharge to be proper and equitable.

LIBERAL CONSIDERATION: Due to the Applicant's contentions or 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 contended that they had an undiagnosed Mental Health (MH) condition of PTSD and was "grappling with the effects of PTSD," and the impact it had on their overall ability to reintegrate into civilian life. The Applicant contended they were not provided the necessary medical support despite their efforts to seek assistance. As supporting evidence, the Applicant submitted a Psychiatric Evaluation dated 11 October 2023.

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

There is evidence the Applicant was evaluated for PTSD during their time in service and did not meet diagnostic criteria for a PTSD diagnosis. The Applicant's records revealed the Applicant received the diagnosis of anxiety disorder during their time in service which was noted to be resolved by the provider per the Applicant's report of symptom abatement after six sessions with a mental health provider.

3. Does that condition, or experience actually excuse or mitigate the discharge?

There is insufficient evidence that any MH condition or experience excuses or mitigates their behavior leading to their discharge. The Applicant was diagnosis of anxiety disorder that was noted to be resolved within two months of treatment per Applicant. An anxiety spectrum condition including PTSD is not associated with the type of misconduct presented in this case. A review of the Applicant's records revealed a pattern of misconducts for the duration of the Applicant's time in service. The Applicant was discharged due to Civil Conviction, felonious cruelty to animals. The intent of the liberal consideration does not apply to willful, premeditated misconducts; further, the intent of liberal consideration does not apply to misconduct involving harm to others. The record showed the Applicant had threatened to harm the animal prior to the civilian conviction of actual harm.

4. Does that condition, or experience outweigh the discharge?

No, since there is no MH condition or experience that excuses or mitigates the discharge, there is no condition or experience that outweighs the discharge.

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 character of service.

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 character of service shall remain "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "Misconduct (Civil Conviction)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 30 October 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, MD 20762

Instructions on how to appeal an AFDRB decision can be found at

<https://afrbportal.azurewebsites.us>

Attachment:

Examiner's Brief (Applicant Only)