

SUMMARY: The Applicant was discharged on 22 March 2009 in accordance with Air Force Instruction, 36-3207, *Separating Commissioned Officers*, with an Under Other Than Honorable Conditions discharge for Misconduct. The Applicant appealed for an upgrade of their discharge characterization and a change to their discharge narrative reason.

The Applicant appeared and testified before the Discharge Review Board (DRB), with counsel, via video teleconference using Zoom on 07 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 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:

-Article 15 for fraternization (x2). Wrongfully distributing some amount of Percocet, a Schedule II controlled substance.

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 contended that their post-service accomplishments have been exemplary, demonstrating that the misconduct was an aberration rather than a pattern of behavior. They argued that the purpose of the less-than-honorable characterization has been achieved and that they were relatively new to military life, customs, and traditions at the time of the allegations.

The Applicant provided the following documents in support of their claim: DD Form 214, *Certificate of Release or Discharge from Active Duty*, Resume, Certificates/Awards/Certifications, Letters of Recommendation

The DRB found that the Applicant hosted a Super Bowl party at their apartment and invited coworkers and others to attend. During the party, they were seen flirting with and kissing an A1C. The Applicant, an officer, was also alleged with providing the A1C with a Percocet, a Schedule II controlled substance. Court-martial charges were preferred, and an Article 32 hearing was held where the Applicant was found guilty and received an Article 15 leading to their discharge. In the Applicant's response to the Article 15, they stated, "I am genuinely sorry for the mistakes I have made. I take full responsibility." Additionally, in their response, they claimed they did not know that the A1C they kissed was in the military and claimed the first name usage was an attempt to create a more cohesive, successful team. In the Applicant's testimony to the Board,

they stated they gave the A1C a Tylenol and not a Percocet. They contended the A1C stole their legally prescribed Percocet from their bathroom, and upon realizing it was gone, they immediately reported it to their chain of command.

The Applicant argued that they did not provide the A1C with Percocet. However, the Board determined that the Applicant bore some responsibility for maintaining control of their prescribed Percocet when strangers came to their house. Additionally, the Board determined the Applicant's fraternization behavior reflected a pattern of misconduct. Therefore, the Board determined that the narrative reason for discharge was accurately reflected as "Misconduct."

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. In weighing these factors, the Board voted to change the Applicant's characterization.

The Board found no violence in the Applicant's misconduct. The Applicant's testimony was consistent and matched their records. The Applicant testified there was a big problem on base with narcotic use and the Board opined that they may have been punished harshly to be made as an example. The Applicant testified that they have a clean post-service record and the misconduct occurred nearly 15 years ago. The Applicant took responsibility for their misconduct. Since their discharge, the Applicant has done significant community service and provided documentation of volunteer work in their community. The Applicant provided numerous licensure and certification documents for their achievements in the nursing career field along with documentation of 18 years of professional job history. The Applicant had less than two years of military service at the time of their misconduct, there was youthful indiscretion. The Applicant had numerous positive character statements in their discharge package from their post-service time.

The Board determined that the Applicant's service was honest and faithful, but that significant aspects of the member's conduct outweighed positive aspects of the member's military record, thus a General (Under Honorable Conditions) characterization, rather than an Honorable characterization, was appropriate.

FINDING: The DRB voted unanimously to *approve* the Applicant's request to upgrade their discharge characterization. The DRB voted unanimously to *deny* a change the discharge narrative reason.

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 inequitable. The awarded characterization of service shall change to "General," the narrative reason for separation shall remain "Misconduct," and the reentry code shall remain "N/A." The DRB results were approved by the Presiding Officer on 9 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://afrbportal.azurewebsites.us>.

Attachment:
Examiner's Brief (Applicant Only)