

SUMMARY: The Applicant was discharged on 17 June 2021 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Honorable Conditions - (General) discharge for Misconduct (Minor Infraction). 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 10 October 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 DRB provided a notice to inform the service member of resources available to help answer their questions about the application process and/or to help them supplement their application, to include information on the types of evidence that can be submitted to support a claim; information regarding potential eligibility for mental health treatment and evaluation services offered by the Department of Veterans' Affairs (VA); general information regarding Veterans Service Organizations that may assist with DRB applications, and their right to retain counsel; a link to a database of legal services organizations that serve members of the military, veterans, and their families; the weblink to the VA's Directory of Veteran's Service Organizations; and information regarding reasonable accommodation requests from the DRB in the application and adjudication process.

The Applicant's record of service included the following documented misconduct leading up to their discharge:

- Letter of Reprimand (LOR) for being arrested and charged with a Class 1 misdemeanor for domestic assault.
- LOR for insubordination toward a noncommissioned officer and absence without leave.
- LOR for failure to follow a direct order to report for duty at the prescribed time.
- Article 15 for disobeying a lawful order and violating the leave and travel policy during the pandemic.
- Article 15 for failure to report at the prescribed time and willfully disobeying a direct order to attend family maltreatment intervention sessions.

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 expressed deep regret for their past actions and had included a VA disability letter documenting their severe depression and anxiety. They were actively seeking help and working toward becoming a healthier individual. The Applicant stated they were using this time to heal from past traumas and focus on furthering their education. They hoped the Board would provide an opportunity to rectify their

past mistakes to benefit them and their family.

The DRB determined that the Applicant's record contained multiple instances of misconduct, with particular emphasis on the serious nature of the domestic assault incident. Such behavior, especially when it involves harm to others, constitutes a significant violation of military standards and is generally not excused under liberal consideration policies.

While the Applicant expressed remorse for their actions and highlighted their post-service efforts to address mental health issues, including seeking treatment, pursuing recovery, and furthering their education, these actions were insufficient to outweigh the gravity of the in-service misconduct. Although the Board considers post-service rehabilitation, discharge upgrades are not automatically granted, particularly when the misconduct involves serious offenses like domestic assault.

Given the severity of the Applicant's misconduct, including the domestic assault and repeated disobedience of orders, and the absence of an in-service mental health condition that could mitigate this behavior, the Board concluded that the discharge was both appropriate and consistent with military standards.

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 checked the box for "other mental health" on the application. The Applicant contended "I am regretful for my actions in the past. As shown on my VA disability letter, I was going through severe depression and anxiety[sic]. I am curring seeking help for this and am trying to be a healthier person. I have been using this time to recover from my past traumas and would like to further my education and progress even further. Please allow me the opportunity to be better than I was and to rectify my mistakes for myself and my family."

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

A review of the Applicant's records revealed the Applicant utilized Behavioral Health Optimization Program (BHOP) services for three sessions related to marital discord during his time in service. The Applicant's records also revealed the Applicant was evaluated by a mental health provider during a walk-in session after the Applicant made suicidal statements subsequent to an argument with his wife. There is evidence the Applicant was command referred to the ADAPT program during his time in service due to maladaptive alcohol use. A review of the Applicant's ADAPT records revealed the Applicant denied mental health symptoms and declined mental health referrals. The Applicant's records revealed the Applicant was command referred to the Family Advocacy Program (FAP) during his time in service due to allegations 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 misconduct (minor infractions) with four years, seven months, three days' time in service.

There is no evidence the Applicant endorsed or exhibited any clinically significant indicators of a mental health condition during his time in service. The Applicant's records revealed the Applicant endorsed marital problems during his time in service but did not endorse any mental health symptoms with this psychosocial stressor. There is no evidence a mental health condition caused or substantially contributed to the misconducts that led to the Applicant's discharge. Further, the intent of liberal consideration is generally not applied to misconducts involving harm to others; a review of the Applicant's discharge revealed the Applicant's misconduct included striking his former spouse in the face.

The Applicant submitted his VA rating as evidence in support of his claim. Regarding the Applicant's concurrence with his VA rating, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran. 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.

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

Because the Applicant's discharge was not mitigated or excused by a mental health condition, the Applicant's discharge 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.

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 characterization of service shall remain "Under Honorable Conditions - (General)," the narrative reason for separation shall remain "Misconduct (Minor Infraction)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 29 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)