

**SUMMARY:** The Applicant was discharged on 05 September 2018 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other Than Honorable Conditions discharge for In Lieu of Trial By Court Martial. The Applicant appealed for an upgrade of their discharge characterization and a change to the reentry code.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 10 January 2025. 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 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.

In their application, the Applicant requested the Board review their discharge for both impropriety and equity, citing multiple reasons. They stated they were imprisoned and underwent a trial that was ultimately overturned. The investigation and legal process, according to the Applicant, caused significant trauma and undue stress. Additionally, the Applicant asserted that they were unable to reenlist in any branch of service due to their reentry code and that their service was prematurely terminated against their wishes. They further contended that this prevented them from completing their contractual obligation and serving to the best of their abilities. The Applicant reported being informed by legal counsel and the relevant authorities that, due to newly discovered information and the overturning of the case, all charges were dropped, and there would be no penalties, punishments, or fines. Despite this, they were administratively discharged Under Other Than Honorable Conditions without any explanation.

The Applicant provided the following documents in support of their claim:  
-Case File

## -Police Memo, Firearm Owner's Identification Card

A review of the record revealed the Applicant was court-martialed in a General Court-Martial for several charges involving sexual assault and theft of property (an iPad and headphones valued under \$500). He pled not guilty to the sexual assault yet pled guilty to the theft of property. A jury found him guilty of sexual assault. The Applicant then proceeded to the sentencing portion of the trial and was sentenced to lengthy confinement and a dishonorable discharge for the conviction of sexual assault and theft of property. The case was appealed to a higher court. The higher court affirmed the guilty plea for the theft and the conviction for sexual assault was over-turned. Because the sentence was to lengthy confinement – 96 months - and a dishonorable discharge, the appellate court set aside the entire sentence after only affirming the theft conviction. The Applicant was released from confinement because the sentence was set aside, but this required a new sentencing proceeding for the charge of theft to which he had pled guilty. It also required a new Special Court-Martial to be convened because the theft was not the type that is usually in a General Court-Martial arena. The one charge of theft – iPad and headphones - was sent to a Special Court-Martial. There was a Pre-trial agreement submitted, and it was approved and stated “no punishment.” Because the Applicant had already spent a good deal of time in confinement for a conviction that was over-turned and the dollar amount of the theft was under \$500, there was to be no punishment for the theft conviction. He was discharged with a Under Other Than Honorable Conditions (UOTHC) service characterization in lieu of being court martialed in a Special Court-Martial for theft of property.

The DRB found no evidence of impropriety or inequity in the Applicant's discharge, which they voluntarily requested separation with a UOTHC service characterization in lieu of a Special Court-Martial for a theft charge. The Board determined there was no mental health condition that caused or contributed to the misconduct, as the Applicant's claim of PTSD was unsupported by service records, which revealed no diagnosis or mitigating symptoms. While the Applicant cited stress from legal proceedings, this does not qualify as a mitigating factor for prior misconduct. Furthermore, while there were additional charges ultimately the theft conviction and guilty plea were upheld, and the discharge was properly executed in accordance with regulations. The discharge was deemed equitable, as it stemmed from the Applicant's voluntary choice to avoid further legal proceedings and was appropriately characterized based on the upheld misconduct.

**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 “PTSD” and “sexual assault/harassment” on the application. The Applicant contended “I am requesting an upgraded discharge due to multiple reasons including being wrongfully imprisoned and having my trial conviction overturned with prejudice, the trauma and stress caused by the investigations and legal processes that took place, as well as not receiving an official DD214. I have not been able to re-enlist in any branch of service due to my re-entry code and I had to end my service to my country sooner than I wanted to unnecessarily. I did not get to fulfill the totality of my contract, nor*

*time of service obligation. I was not allowed the opportunity to serve to the best of my ability due to the actions of my administration. I was told by the legal counsel and convening authority that due to the information that had discovered/brought forward and the overturning of my case that all charges were dropped and I would not face any punishments, penalties and/or fines. I was administratively discharged under other than honorable conditions without any explanation."*

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

*A review of the Applicant's in-service records revealed the Applicant received mental health check-ins during his time in confinement and denied mental health symptoms. The Applicant's records revealed the Applicant attended one mental health session upon release from confinement and reported he reported increased irritability regarding the length of time it took him to be released after his charges were dropped but denied other mental health symptoms. There is no evidence the Applicant received the diagnosis of PTSD during his time in service. There is no evidence the Applicant exhibited or endorsed and clinically significant indicators of PTSD during his time in service.*

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 an under other than honorable character of service in lieu of trial by court martial with three years, four months, twenty-six days' time in service. Liberal consideration does not apply to this applicant's case. Although the Applicant checked the boxes for "PTSD" and "sexual assault/harassment" on the application, the Applicant made no claims or contentions that a mental health condition caused or contributed to the misconducts that led to the Applicant's discharge. Further, the Applicant was the alleged perpetrator of sexual assault during his time in service, not the victim of sexual assault or harassment, based on the available records, thus the Applicant's discharge would not be mitigated. Lastly, the Applicant contended he experienced trauma and stress due being under investigation. While military legal processes can be stressful, they do not constitute a mental health condition that mitigates the misconduct that initiated the legal proceedings.*

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

*The Applicant made no claim or contention that a mental health condition caused or substantially contributed to the misconduct(s) that led to the Applicant's discharge. There is no evidence the Applicant's discharge is outweighed by an in-service 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.

**FINDING:** The DRB voted unanimously to **deny** the Applicant's request to upgrade their discharge characterization and to change the reentry code.

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.

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 "Under Other Than Honorable Conditions," the narrative reason for separation shall remain "In Lieu of Trial By Court Martial," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 24 Jan 2025. 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 20762-6435

Instructions on how to appeal an AFDRB decision can be found at  
<https://afrbaportal.azurewebsites.us>

Attachment:  
Examiner's Brief (Applicant Only)