

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL DOCUMENTCASE NUMBER
FD-2024-00318

SUMMARY: The Applicant was discharged on 10 May 2018 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Under Other Than Honorable Conditions character of service for Misconduct (Sexual Perversion). The Applicant appealed for an upgrade of their discharge characterization and a change to the discharge narrative reason.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 03 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 reasons for the applicant's discharge were as follows:

He did, at or near Tucson, Arizona, on or about 7 April 2017, intentionally expose his genitalia in an indecent manner. For this misconduct, he was apprehended by the University of Arizona Police Department.

On 5 September 2017, pursuant to a pretrial agreement, he pled guilty to disorderly conduct and was sentenced to supervised probation for 12 months, unsupervised probation for 3 months, and to pay a fine of \$1,529.00 (\$1,000 of which was suspended).

He did, at or near Tucson, Arizona, on or about 30 January 2018, fail to comply with your probationary conditions set forth in your pretrial agreement of 5 September 2017. For this misconduct the Pima County prosecutor's office has petitioned to revoke your probation and proceed with vacating your suspended sentence.

He did, at or near Tucson, Arizona, on or about 12 September 2016, unlawfully push and hold your wife, against your kitchen cabinets and your refrigerator, with his hands. For this misconduct, he was apprehended by the Security Forces Squadron and his misconduct was memorialized in a Letter of Admonishment on 28 December 2016 and referred to the Alcohol and Drug Abuse Prevention and Treatment Program.

He knew or should have known your duties at Davis-Monthan Air Force Base, Arizona, on or about 2 February 2015, were derelict in the performance of those duties in that he negligently failed to safely operate a government-owned vehicle, as it was his duty to do. For this misconduct, he was issued a Letter of Reprimand on 5 February 2015.

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 argues that the process leading to their Other Than Honorable Discharge was unfair, citing a lack of due process and the absence of an opportunity to contest the discharge before it was finalized. Despite acknowledging some missteps during their service, the Applicant believes their overall performance was exemplary, as reflected by their 20 decorations and positive evaluation reports. They were not given a chance to sign their DD 214, and they feel the discharge process was rushed and handled unfairly. The Applicant claims they were misinformed about the likelihood of retention regardless of the trial's outcome, which influenced their decision to take a plea deal. They believe that had they been given a fair opportunity to challenge the discharge or let the trial's result influence their retention, they could have saved their career or at least received a General Discharge, allowing access to veterans benefits. The Applicant hopes for a discharge characterization upgrade, emphasizing their contributions and sacrifices for the military and their desire to access VA benefits for their family's future.

The DRB determined the discharge may only be upgraded if evidence of an inequity or impropriety at the time of discharge is established. After a thorough review of the complete evidence of record, there is no evidence supporting the applicant's arguments. He was accorded all due process rights, including the right to legal counsel and the right to respond to the action. While the applicant initially elected to appear before an administrative discharge board, he later elected to waive his right to a board. As the applicant had a right to legal counsel, he had a more than reasonable opportunity to make sure he understood the impact of the decisions he made in response to the action and was fully aware that his discharge could result in a UOTHC discharge. The DRB concluded that the severity of the Applicant's willful misconduct, particularly their involvement with civilian authorities, outweighed the positive aspects of their service. The command at the time appropriately considered this misconduct as a serious departure from the expected conduct of an Airman. The process was conducted in accordance with military regulations, and the Applicant was given opportunities to respond to the charges. The Board found no indication of improper counseling or denial of due process. As a result, the discharge characterization remains unchanged.

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

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 evidence provided by the applicant was not sufficient to conclude the discharge was somehow inequitable or represented an impropriety. Therefore, the awarded characterization of service shall remain "Under Other Than Honorable," the narrative reason for separation shall remain "Misconduct (Sexual Perversion)," and the reentry code shall remain "2B." The Air Force DRB (AFDRB) results were approved by the Presiding Officer on 29 Jan 25. 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)