

SUMMARY: The Applicant was discharged on 3 July 2023 in accordance with *Air Force Instruction 36-3208, Administrative Separation of Airmen*, with an Under Honorable Conditions - (General) discharge for Misconduct (Serious Offense). 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 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 contended that their discharge had been unfairly approved by higher command without a trial and that their (civilian court) case, which had been resolved through a pretrial diversion agreement, had no sufficient cause for denial as approved by the court. They also argued that their discharge on March 7, 2023 had been unjust, as their original contract end date was March 27, 2023. The applicant sought a review and correction of their discharge decision.

The applicant provided no documents in support of their claim except for:

-DD214

-Pretrial Diversion Agreement

The DRB considered the applicant's claim of procedural impropriety based on their pretrial diversion agreement but noted that military administrative discharge decisions are governed by the preponderance of

evidence and military standards, not civilian court outcomes. Per Department of the Air Force Instruction 36-3211, *Military Separations*, members are subject to discharge when there is evidence of acts or patterns of misconduct. A review of the record revealed the applicant was discharged for serious misconduct based on civilian charges of gross sexual imposition and burglary, which led to the pretrial diversion agreement. Both charges are listed as felonies in the State of North Dakota where the applicant was charged. The agreement's potential conclusion in 2026 does not negate the misconduct or the military's obligation to act on said misconduct. Further, the applicant provided no evidence to support claims of impropriety, inequity, or to counter the misconduct charges. There are no laws or policies that prevent the service from discharging a member any time prior to the end of their service obligation. Therefore, the board upheld the applicant's discharge status.

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:

The applicant checked the box for "sexual assault/harassment" on the application. Liberal consideration is not applied to this applicant's request. 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, and contended procedural improprieties related to the crimes the applicant was charged with, including gross sexual imposition and burglary.

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 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 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 (Serious Offense),"

and the reentry code shall remain “2B.” The DRB results were approved by the Presiding Officer on 3 Feb 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)