

SUMMARY: The Applicant was discharged on 18 April 2019 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, a change to the discharge narrative reason, 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 stated that it had taken them several years to build the courage to submit a request to the Board. Since their separation, they had completed both an associate and a bachelor's degree and were currently enrolled in a master's program. Despite these achievements, they struggled with fear and feelings of separation from the military, which had affected their ability to seek employment after completing their education. The Applicant also shared that, during this time, they had their first child and faced significant challenges balancing their personal and academic responsibilities. The Applicant maintained that their separation was unjust, alleging that OSI investigators had coerced them into making false statements through intimidating tactics, such as getting in their face and hitting the table. They also claimed they had been unaware of their rights to speak with an attorney and were only allowed to leave after their flight chief had intervened, enabling them to rest. Following their discharge, the Applicant experienced severe depression, including thoughts of self-harm, and described feeling as though their life was over. While they had made efforts to move forward, they stated they continued to struggle with unresolved emotions stemming from their separation.

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

- Associate of Arts Degree
- Bachelor's Degree
- Master's Degree Enrollment Verification
- Transcript

A review of the record revealed the Applicant was properly discharged under Chapter 4 after voluntarily requesting administrative separation in lieu of a court-martial for sexual assault and burglary charges. Records confirm the Applicant was represented by Area Defense Counsel (ADC), with no evidence of rights violations. Allegations of OSI coercion were unsupported and the Applicant's counsel raised no challenges during the discharge process. Thus, the DRB determined the discharge was proper, equitable, and aligned with the seriousness of the misconduct. Although the Applicant cited stress, depression, and PTSD, there was no evidence of a diagnosed mental health condition during their service or its connection to the misconduct. While the board commends the Applicant on their academic achievements and personal growth, they do not mitigate the severity of the offenses or justify a change in discharge characterization.

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" on the application. The Applicant contended "I still feel like my separation was unjust and OSI made me give answers that were incorrect by getting in my face and hitting the table. At the time I was scared and did not know I should speak to an attorney, finally after hours in the office my flight chief picked me up and I was able to get some rest. After getting out of the service there were a few months that led to my depression and not wanting to be alive anymore, I felt like my life was over, I have since then learned to move forward the most, but I still have not overcome that feeling."

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

There is no evidence the Applicant sought or received any mental health treatment during his time in service. There is no evidence the Applicant exhibited or endorsed any clinically significant features of a mental health condition during his time in service. There is no evidence the Applicant received the diagnosis 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 discharge package revealed the Applicant requested and was granted a Chapter four discharge in lieu of a trial by court martial for two charges including sexual assault and burglary. Liberal consideration does not apply to this applicant's case. In addition to the Applicant making no contentions that a mental health caused or substantially contributed to the misconduct(s) that led to the Applicant's discharge, the intent of liberal consideration generally does not apply to premeditated

misconducts or misconducts involving harm to others, including sexual assault. The Applicant contends he experienced mental health symptoms in response to being under investigation and during his discharge proceedings. While military legal proceedings 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. Because the intent of liberal consideration generally does not apply to premeditated misconducts or misconducts involving harm to others, including sexual assault, the Applicant's discharge is 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, to change the discharge narrative reason, 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.

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)