

SUMMARY: The Applicant was discharged on 08 July 2015 in accordance with Air Force Instruction, 36-3207, Separating Commissioned Officers, with an Under Other Than Honorable Conditions (UOTHC) discharge for Unacceptable Conduct. The Applicant appealed for an upgrade of their discharge characterization, a change to the discharge narrative reason, a change to the reentry code, and a change to the separation code.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 19 December 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:

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 stated their encounter with a well-known prostitute in the Las Vegas area and their lapse in judgement is what led to their discharge. They stated the woman pretended to be a normal adult in the online community, and they were not aware of who she truly was at the time. They claimed their PTSD is linked to three traumatic events they experienced prior to their second term of service, which include a violent attack resulting in hospitalization, a near-death experience while relocating to Lackland AFB, TX, and sexual trauma involving a fellow Airman. They stated those traumatic events are what led to the development of severe distrust in people, paranoia, depression, poor decision making, extremely reckless behavior, and massive gambling among other symptoms.

The DRB determined there was no inequity or impropriety in the Applicant's discharge from the Air Force. The Applicant had engaged in a series of text messages and internet phone calls with a minor female for several weeks. Upon learning that the girl was 13 years old, the Applicant continued to maintain communication with her. The Applicant acknowledged flirting with the minor and addressing her in a familiar manner, referring to her as "babe" due to perceived physical attractiveness. Following the discovery of the girl's age, the Applicant agreed to meet her in person to "get to know her better" and verify her reported height of 5'8". The Applicant traveled 30 minutes to the girl's grandparents' residence and parked in a discreet location to avoid detection by the girl's family members. The minor reported that her and the Applicant hugged, and she opted to engage in a walk and conversation rather than remaining in the vehicle. During this encounter, the Applicant expressed they were "starting to have feelings" towards the girl. Subsequently, the pair was apprehended by law enforcement officers and taken into custody for questioning. The Applicant acknowledged awareness of the age of consent in Nevada, which is 16 years old, and the significant age gap between themselves and the minor, totaling 18 years. This incident served as the basis for the Applicant's discharge from military service. The Applicant exercised their right to a hearing before the Board of Inquiry (BOI), submitting an unsworn statement and presenting an unsworn statement to the Board members. The BOI reviewed evidence pertaining to the Applicant's military performance and bearing as an officer, which revealed a pattern of tardiness, absenteeism, and disrespect, as well as a lack of appreciation for their role and responsibilities. Consequently, the BOI concluded that the Applicant's misconduct outweighed their positive military record and recommended an Under Other Than Honorable Conditions (UOTHC) characterization. After review of the Applicant's medical records, it was determined the Applicant denied having any mental health issues and there was no record of any mental health evaluation, treatment, or mental disorder diagnosis during service. The traumatic events the Applicant mentioned occurred during their first term of service, so they are considered to have existed prior to service (EPTS). In addition, there is no evidence their prior EPTS condition was aggravated by their second term of service. Therefore, the Board determined the Applicant's discharge was fair and equitable.

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 marked "PTSD" and "OTHER MENTAL HEALTH" on their application, DD Form 293, to the DRB and contended a woman they identified by name in their petition was a well-known prostitute in the Las Vegas area. The woman pretended to be a normal adult in the online community, and they were not aware of who she truly was at the time. They claimed their encounter with this individual and their lapse in judgment led to their discharge. They also contended their discharge was linked to PTSD—they endured three traumatic events prior to their second term of service. Their traumatic experiences were a violent attack resulting in hospitalization (they were physically assaulted, and their arm was broken), a near-death experience while PCSing to Lackland AFB, and sexual trauma in their dorm room involving another Senior Airman. They claimed these traumatic experiences led to the development of severe distrust in people, paranoia, depression, poor decision-making, extremely reckless behavior, and massive gambling among

other symptoms.

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

There is no evidence or records that the Applicant received any mental health evaluation, treatment, or a mental disorder diagnosis during any of their terms of service. Thus, there is no evidence their mental health condition including PTSD had existed or occurred during their military service. They received a separation physical examination from their PCM in July of 2015 and as part of this examination, they completed the Report of History form and denied having any mental health issues including nervous trouble of any sort, loss of memory, amnesia, or neurological symptoms, frequent trouble of any sort, depression or excessive worry, suicide attempt, and substance or abuse issues. There is also no evidence or records to corroborate that any of their traumatic experiences including sexual trauma or assault were reported, existed, or occurred during their military service. A review of their treatment records from the Department of Veterans Affairs (VA) revealed they were first diagnosed with PTSD in February of 2019, almost five years after their final discharge from the Air Force, developed from their traumatic experiences of being sexually and physically assaulted in 2003. These traumatic experiences occurred during their first term of service when they were an enlisted service member in the Air Force. They alleged they developed severe distrust in people, paranoia, depression, poor decision-making, extremely reckless behavior, and massive gambling among other symptoms from their traumatic experiences, and there is no evidence any of these symptoms occurred during their military service. They possibly engaged in poor decision-making but no evidence was caused by having a mental health condition.).

3. Does that condition, or experience actually excuse or mitigate the discharge?

There is no evidence or records to substantiate any of the Applicant's contentions. Their mental health conditions of PTSD, depression, etc. were developed from their first term of service and would be considered as a prior service condition or had existed prior to service (EPTS). There is no evidence their EPTS condition was aggravated by their military service from their second term of service. According to the Legal Review of their Administrative Discharge Action in January of 2014 and a review from the Deputy Director of the Administrative Law Directorate of their Administrative Discharge in April of 2015, the Applicant was arrested in February of 2013 by the Las Vegas Metropolitan Police Department (LVMPD) for using technology to lure a 13-year-old child away from her parents with the intent of engaging in sexual conduct. They admitted to LVMPD that they knew the girl was 13 years old and knew the age of consent in Nevada was 16 years old. Even after they found out she was 13 years old in February of 2013, four days prior to their arranged meetup, they continued to talk to her as usual. They developed plans and carried out actions to conceal their meeting on the day they met and was arrested shortly thereafter by LVMPD. These reports dispute their contention that they were not aware of the individual's age. Their behaviors were premeditated indicating that they were aware of the situation but deliberately chose to engage in inappropriate behaviors with an underage individual anyway. There is no evidence they had a mental health condition including PTSD or was in emotional distress that impaired their judgment at any time they inappropriately communicated, met, and engaged with the underage individual. Their behaviors and misconduct are egregious and could not be excused or mitigated even if they had a mental health condition. Their mental health condition does not excuse or mitigate their discharge.

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

Since the Applicant's mental health condition does not excuse or mitigate their discharge, their mental health condition also does not outweigh their original discharge. Their behaviors were serious offenses and are not outweighed by their mental health condition or traumatic experiences.

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, to change the reentry code, and to change the separation code.

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 (UOTHC)," the narrative reason for separation shall remain "Unacceptable Conduct," and the reentry code shall remain "N/A." The DRB results were approved by the Presiding Officer on 3 January 2024. If desired, the Applicant can request a list of the Board members and their votes by writing to:

Air Force 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://afrbportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)