

SUMMARY: The Applicant was discharged on 01 April 2024 in accordance with Department of the Air Force Instruction 36-3211, *Military Separations*, with an Under Honorable Conditions (General) discharge for Misconduct (Civil Conviction). 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 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:

- Letter of Reprimand for being arrested and charged with a gross misdemeanor by discharging a firearm outside of a licensed shooting range.
- Letter of Counseling for failing to satisfactorily perform their duties.

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 contended there were elements of discrimination involved in their discharge, which may have influenced the outcome unfairly. In the situation of their discharge, the Applicant states they found themselves in a position where they felt that their property and safety were threatened, leading them to defend themselves and discharge their firearm. They believed the circumstances surrounding their separation **did** not accurately reflect their abilities, dedication, and commitment to serving in the armed forces. They claimed to have taken the time to reflect on their past actions and have demonstrated growth and maturity since their separation.

The Discharge Review Board (DRB) determined that the Applicant's discharge from military service was proper and equitable. The Applicant had received a letter of reprimand (LOR) due to their arrest and charge of a gross misdemeanor for unlawful discharge of a firearm by civilian authorities. In accordance with Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, paragraph 7.41, a civilian conviction is a mandatory basis for discharge. The Applicant claimed that their actions were taken in self-defense, as they felt threatened while protecting their property. However, the discharge package included a police report containing the Applicant's statement from the night of the incident, which contradicted this claim. According to the report, the Applicant stated that they had heard their car alarm, gone outside, and seen an unknown person running away from their vehicle. The Applicant then claimed to have chased after the vehicle but failed to catch up. During this time, they saw a police department helicopter in the area and, due to frustration with past response times, fired a single round into the air to get the police department's attention. The Applicant subsequently pleaded no contest to the charge and received an interim sentence, which included a 90-day period of good behavior, counseling, and community service. Upon completion of the interim sentence, the case was dismissed. The Applicant provided documentation from the State confirming that they had fulfilled the terms of their interim sentence, resulting in the dismissal of the case. Despite the charges against them, the Applicant maintained that their actions were justified as self-defense. The discharge package demonstrated that the separation authority had thoroughly reviewed the facts of the Applicant's case and considered their entire military record before recommending the discharge and service characterization. Furthermore, the discharge package noted that the Applicant did not have a recorded diagnosis of Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) during the out-processing procedure. Although the Applicant indicated PTSD in block 19 of the DD Form 293, they failed to provide any testimony or supporting documentation to confirm the diagnosis or explain how it may have contributed to their misconduct. The Applicant also failed to provide any evidence to support the claim of discrimination. Per DAFI 36-2023, *Secretary of the Air Force Personnel Counsel*, paragraph 3.2.4 "The DRB is not an investigative body and presumes regularity in the conduct of governmental affairs unless there is substantial credible evidence to overcome this presumption. The presumption of regularity dictates that absent evidence to the contrary, commanders, supervisors, and other officials involved with an action acted fairly and in good faith. The Applicant bears the burden of providing evidence to overcome this presumption, and the board will only grant relief if it determines there is sufficient evidence to conclude the Applicant's discharge was not proper or equitable." Therefore, the DRB's determination that the Applicant's discharge was proper and equitable remained unchanged.

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" on their application to the DRB and contended they were found in a position where they felt their property and safety were threatened causing them to take the necessary action to defend themselves and their belongings. They discharged their firearm in response to this situation and felt their decision was made from a genuine concern for their well-being and the security of their property rather than

from malicious intent. They believed the circumstances surrounding their separation do not accurately reflect their abilities, dedication, and commitment to serving in the armed forces and that they had grown and matured since their separation. They also alleged there was discrimination involved in the handling of their case that may have influenced an unfair outcome.

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

There is no evidence the Applicant had or was diagnosed with PTSD during their military service. They were evaluated by a mental health provider twice during service—the first time in January 2023 for feeling depressed after they failed their CDC test and the second time in February 2024 for sleep issues relating to an event occurring in 2023 involving their car being stolen multiple times and in which they fired their gun to deter a carjacking and put in jail for a brief period of time. They were given a condition (not diagnosis) of Phase of Life from the first evaluation and a diagnosis of Insufficient Sleep Syndrome from the second evaluation. They were first diagnosed with PTSD by a mental health provider at the VA in July 2024, about three months after their discharge, for their experiences of being pulled over and arrested for discharging a firearm in the last six months.

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

The Applicant was discharged from service after being arrested and charged with a gross misdemeanor by discharging their firearm outside of a licensed shooting range in September 2023 and pled no contest (Nolo Contendere) to discharging a firearm at or into an abandoned structure, vehicle, aircraft, or watercraft resulting in a civilian conviction in October 2023. They had submitted a response to their Letter of Reprimand and discharge notification to explain their behaviors and stated they had their car stolen multiple times in the past causing an inconvenience to them and significant damage to their vehicle. They said they were at their wit's end. When they heard their car alarm go off and noticed an unknown person inside their car and attempting to get out, they reacted with fear and grabbed their firearm. They were unsure if the individual posing a threat had a weapon and when they saw him (the perpetrator) flee, the Applicant decided to shoot their gun. They communicated this information when they were arrested and was frustrated with the police's slow response time in the past. Their intention was to defend themselves and their property/car. They reported they had not consumed any alcohol or engaged in other impairing activities at the time. The Applicant's statements provided at the time of service indicated they were stressed or in emotional distress at the time of the incident due to their previous experiences of theft of their property that caused them to discharge their firearm. Their behavior of discharging their firearm may be in self-defense and in reaction to their previous traumatic and stressful experiences, but their behavior was a serious offense resulting in a civil conviction and could not be excused or mitigated even by their mental health condition. They could have severely injured or fatally killed an innocent bystander, and they made the decision to shoot their gun even though they saw the perpetrator flee posing no threat to them. Therefore, their mental health condition does not excuse or mitigate their discharge.

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

Since their mental health condition does not excuse or mitigate their discharge, their mental health condition also does not outweigh their original discharge. Their misconduct resulting in a civil conviction itself is a serious offense and their mental health condition does not outweigh their discharge for this reason.

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.

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 (Civil Conviction)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 13 January 2025. 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://afrbaportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)