

SUMMARY: The Applicant was discharged on 04 May 2022 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with a Under Other Than Honorable Conditions discharge for In Lieu of Trial by Court Martial. 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 21 November 2024. The Applicant was 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:

- Article 15 for unlawfully carrying a knife longer than 6cm, breaking United States Forces-Japan Instruction, 31-207, *Firearms and Other Weapons in Japan*
- Article 15 for failing to go to work
- Article 15 for failing to go to their appointed place of duty
- DD Form 458, *Charge Sheet*, Charge I: Violation of UCMJ, Article 128, unlawfully pushing victim's body with their hands, unlawfully biting victim's ear with their mouth, and unlawfully strangling victim; Charge II: Violation of UCMJ, Article 120, committing a sexual act upon victim by penetrating the victim's mouth with their penis without consent.

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 is requesting an upgrade to their character of service and narrative reason due to a mental health diagnosis which is related to their time in service.

The DRB conducted a thorough examination of the Applicant's case and determined that their discharge from the military was proper and equitable. A review of the Applicant's administrative records revealed that they were facing a court-martial for multiple serious offenses, including violating Article 128 of the Uniform Code of Military Justice (UCMJ) by committing physical and sexual assaults against civilians without their consent and violating Article 112a of the UCMJ by using methylenedioxymethamphetamine, a Schedule I controlled substance. The Applicant had been held in pre-trial confinement for 95 days before requesting a discharge in lieu of a trial by court-martial. The request was approved, and the Applicant was discharged with an Under Other Than Honorable Conditions (UOTHC) service characterization.

Although the Applicant has since been diagnosed with mental health issues, their discharge package indicated that they had been examined and found not to have a mental disease or defect that would have impaired their ability to understand the law or refrain from committing crimes while serving in the military. Additionally, the Applicant had not deployed overseas in support of contingency operations in the 24 months preceding their separation date.

Based on these findings, the DRB concluded that the Applicant's discharge was justified and that there was no impropriety or inequity in the decision. As a result, the DRB denied the Applicant's request to upgrade their service characterization and change the narrative reason for their discharge.

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?

Yes. The Applicant checked the boxes for "PTSD" and "other mental health" on the application. The Applicant contended "veteran was diagnosed[sic] with a mental health[sic] which is related to the time in service."

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

A review of the available records revealed the Applicant was referred to the Family Advocacy Program (FAP) on multiple occasions during their time in service due to allegations of intimate partner violence. The Applicant's records also revealed the Applicant was command referred to ADAPT for substance use service during their time in service but the Applicant declined to adhere to the rules of the program and made it known to providers of their continued maladaptive substance use while enrolled in the program. The Applicant was evaluated by mental health providers during their time in service and determined to have antisocial personality disorder. The Applicant's records revealed the severity of their behaviors and unwillingness to engage in treatment resulted in their refusal by thirteen global facilities.

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

A review of the Applicant's DD214 revealed the applicant was discharged with an Under Other than Honorable in lieu of trial by court martial with six years, two months, eighteen days time in service.

A review of the Applicant's discharge package revealed the Applicant requested, and was granted, a Chapter 4 discharge under the provisions of AFI- 36-3208 in lieu of a trial by court martial for misconducts including physical assault of multiple females, sexual assault, strangulation, use of MDMA. The Applicant's in-service records revealed a pattern of antisocial behavior and physical maltreatment of others, particularly female intimate partners. Further, based on a review of the Applicant's post-service records, the Applicant's mental health condition of psychosis as likely as not developed post service; there is no evidence the Applicant exhibited any symptoms or prodromes of psychosis and denied any symptoms of mental health condition during their time in service. The severity of the Applicant's misconduct outweighs any mitigation that an in-service mental health condition may have had on the Applicant's misconducts. The intent of liberal consideration generally does not apply to misconducts involving harm to others, including sexual assault and unwanted physical contact. Further, the Applicant's records revealed the Applicant had a pattern of misconduct during their time in service including article 15s for failure to go and for violating international agreements by being apprehended off base with a weapon and had additional Family Advocacy involvements beginning early in their military career involving physical maltreatment of a female intimate partner.

The Applicant submitted letters from their post-service VA treatment providers indicating the Applicant has been compliant with their post-service mental health treatment. The board acknowledges the Applicant's apparent mental decompensation post service and commends their treatment compliance. Regarding the Applicant's concurrence with their VA diagnoses, the VA, operating under a different set of laws than the military, is empowered to offer compensation for any medical or mental health condition with an established nexus to military service, without regard to its impact on a member's fitness to serve, the narrative reason for release from service, or the length of time that has transpired since the date of discharge. The VA may also conduct periodic reevaluations for the purpose of adjusting the disability rating as the level of impairment from a given condition may improve or worsen over the life of the veteran.

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

Based on a review of the Applicant's post-service records, the Applicant's mental health condition of psychosis as likely as not developed post service; there is no evidence the Applicant exhibited any symptoms or prodromes of psychosis and denied any symptoms of mental health condition during their time in service. Additionally, the severity of the Applicant's misconduct outweighs any mitigation that an in-service mental health condition may have had on the Applicant's misconducts. The intent of liberal consideration generally does not apply to misconducts involving harm to others, including sexual assault and unwanted physical contact.

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.

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 "In Lieu of Trial by Court Martial," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on 25 November 2024. 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://afrbportal.azurewebsites.us>

Attachment:
Examiner's Brief (Applicant Only)