

SUMMARY: The Applicant was discharged on 22 March 2023 in accordance with Air Force Instruction 36-3208, Administrative Separation of Airmen, with an Under Other Than Honorable Conditions with a Narrative Reason of In lieu of Trial by Court Martial. The Applicant appealed for an upgrade of their discharge characterization.

The Applicant requested the Board be completed based on a records only review. The Board was conducted on 27 February 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.

The Applicant believes their spouse fabricated abuse allegations to discredit and prevent the Applicant from fighting for custody of the children and stop the Applicant from their retirement compensation. The spouse also falsely accused the Applicant of making threats against the U.S. The Applicant provided evidence to support these claims as untrue. Although the Civilian Court claimed the Applicant was convicted of abuse, the Central Registry Board (CRB) found no evidence. The Applicant claims they have been in counseling since October 2023 to understand both parties' actions and improve themselves. During the Applicant's time in service, they strived to serve with Integrity, Service Before Self, and Excellence, despite some imperfections in the service record. The Applicant seeks to reverse the situation to ensure the well-being of his children and appreciates the consideration. The Applicant is seeking an upgrade to their character of service based on false allegations made by the spouse that were considered by their leadership during the discharge process. The Applicant also marked PTSD, Other Mental Health, and Sexual Assault/ Harassment and believes the relief would allow them to better care for their children.

A review of the Applicant's military performance revealed an average military career with little to no issues or disciplinary actions. The records showed that the Central Registry Board (CRB) cleared them of child physical maltreatment allegations, yet leadership decided to pursue a court martial for other allegations from the spouse. Although the character references from the Applicant were compelling and described as honorable and trustworthy, significant concerns remain, such as the letter written to leadership by the Applicant's then-spouse, asking for the Applicant to be discharged in lieu of court-martial. The DRB also took note of the civilian parenting plan designed for someone guilty of domestic violence and/or child neglect/abuse. After considering all the information and evidence available to the DRB, the board determined that the Applicant's contentions did not outweigh the presumption of regularity. While the Applicant has sought counseling, the evidence does not sufficiently demonstrate mitigating factors for their actions during service. Therefore, the request is denied.

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 boxes for "PTSD" - "Other mental health" - "sexual assault/harassment" on the Application. The Applicant contended, in part "I have been in counseling since October 2023 to understand my actions and hers. I served with Integrity, Service Before Self and tried to be Excellent in all I do. My service record is not spotless because I am a human, but I've always tried to do the right thing. I believe that [name removed] just wanted to take everything away that I love to include my child. I would like this to be reversed so that I can make sure that my children are taken care of."

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

A review of the Applicant's in-service medical and mental health records revealed the Applicant was referred to mental health services after he was command referred to the Family Advocacy Program for allegations of intimate partner and child maltreatment. The Applicant's records revealed the Applicant reported experiencing nightmares since adolescence and feeling stressed about being under investigation but otherwise denied a history of mental health symptoms or any symptoms that were impairing his ability to perform his duties. There is no evidence the applicant received the diagnosis of PTSD during his time in service. There is no evidence the applicant exhibited or endorsed any clinically significant indicators or PTSD other than self-reporting to his PCM during his separation physical that he wanted it documented in his record that he had PTSD in order for him to make a VA claim.

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 character of service in lieu of trial by court martial with A review of the Applicant's records revealed the Applicant requested and was granted an under other than honorable discharge characterization in lieu of a trial by court martial with twenty two years, nine months, nine days time in service. The Applicant's records revealed the Applicant requested dual action case processing as part of his

discharge that was denied because the Applicant was found to have no medical evaluation board proceedings underway at the time of his investigation or charges for sexual assault (two counts) and assault (one count). 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. There is evidence the applicant was referred to and received mental health services during his military legal 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. A review of the Applicant's mental health record revealed the Applicant endorsed symptoms of nightmares that had been occurring since adolescence and stress related to being under investigation but otherwise denied that any mental health symptoms were impacting his ability to perform his duties or his overall functioning. The Applicant denied committing the misconducts that led to his discharge thus liberal consideration would not apply to misconduct the applicant contended did not occur. Furthermore, liberal consideration is generally not applied in circumstances involving harm to others.

The Applicant submitted his VA rating summary as evidence in support of his contentions. Regarding the Applicant's concurrence with his VA compensation ratings, 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. At the "snapshot in time" of the applicant's service, there is no evidence the applicant had a mental health condition that caused or mitigated the misconduct(s) which led to the applicant's discharge

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. Based on a review of the available records, there is no evidence a mental health condition caused or mitigated the misconduct that led to the Applicant's discharge. Because the applicant's discharge is not mitigated or excused, the Applicant's discharge is also 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.

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.

Instructions on how to appeal an AFDRB decision can be found at <https://afrbaportal.azurewebsites.us>

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 26 March 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

Attachment:
Examiner's Brief (Applicant Only)

