

SUMMARY: The Applicant was discharged on December 19, 2017 in accordance with Air Force Instruction 36-3208, *Administrative Separation of Airmen*, with an Under Other than Honorable Conditions discharge for Misconduct – (Civil Conviction). 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 20 March 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 included, but was 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 appealed for an upgrade to their discharge status and narrative reason, attributing their past criminal actions to a period of severe mental health crisis, which ultimately led to their incarceration. They contended that their actions, while undeniably grave, were not driven by malice but were instead a direct result of a "psychotic break" experienced during the timeframe of the offense. This claim, they state, is verified by a rated diagnosis from the Veterans Affairs (VA) administration.

The DRB determined there was no impropriety or inequity in the Applicant's discharge. A thorough review of the Applicant's records revealed the Applicant accessed mental health services during their service, and a medical evaluation board declined to attribute their misconduct to a mental health condition. The Applicant also provided their VA rating as supporting evidence. However, 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 for service, or the length of time that has transpired since the date of discharge.

In this case, the Board found no evidence of a mental health condition that caused or mitigated the Applicant's conduct. Therefore, the DRB concluded that the Applicant's current condition, even if potentially service-connected, did not justify overturning the original discharge decision. Lastly, the severity of the Applicant's misconduct, and the significant harm caused to others, outweighed consideration for relief in contrast to their subsequent positive behavior. While the Applicant argues an imbalance between their seven years of service and the single act of misconduct, the Board concluded that the nature of the offense outweighs their narrative of rehabilitation and prior honorable service.

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 "other mental health". The Applicant contended, "during the time of the commission of my crime I was experiencing a psychotic break, confirmed by my VA character of discharge determination and rating decision. My crime was not committed out of malice, but due to a severe mental health episode."

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

A review of the Applicant's in-service records revealed the Applicant received mental health services during their time in-service. The Applicant's records revealed the Applicant was referred for a medical evaluation board after they reported their mood was stable on anti-psychotic medication. A review of the Applicant's in-service medication records revealed the Applicant did not pick up their anti-psychotic medications or previous anti-depressant medications from the pharmacy, thus the impacts of the medications are unknown. The Applicant's records revealed the Applicant's medical evaluation board was returned without action during their time in service after it was considered and determined that a mental health condition was not the cause of the Applicant's offense(s).

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 due to, Misconduct - (Civil Conviction), with seventeen years, eight months, eighteen days time in service. A review of the Applicant's discharge package revealed the Applicant was recommended for discharge in absentia due to having been sentenced to prison after pleading guilty to three counts of rape. There is evidence the Applicant received mental health services during their time in service including inpatient and outpatient mental health treatment. The Applicant's records revealed the Applicant's medical evaluation board was returned without action during his time in service after it was considered and determined that a mental health condition was not the cause of the Applicant's offense(s).

The intent of liberal consideration generally does not apply to misconduct involving harm to others, including molestation of children. There is evidence the Applicant had a mental health condition during their time in service. The Applicant's records revealed the Applicant's mental health condition was known and considered at the time of his discharge processing, which occurred after the Applicant was sentenced

for raping their minor daughter on multiple occasions. The severity of the Applicant's misconduct outweighs any mitigation from a mental health condition.

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

The intent of liberal consideration generally does not apply to misconduct involving harm to others, including molestation or raping of children. Although there is evidence the Applicant had a mental health condition during his time in service, the severity of the Applicant's misconduct was not outweighed by his in-service mental health condition.

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 change the discharge narrative reason.

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 "Misconduct – (Civil Conviction)," and the reentry code shall remain "2B." The DRB results were approved by the Presiding Officer on April 4, 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)

