

TYPE		PERSONAL APPEARANCE		X RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO							
	X							
MEMBERS SITTING				VOTE OF THE BOARD				
				HON	GEN	UOTHC	OTHER	DENY
								X
								X
								X
								X
ISSUES		INDEX NUMBER		EXHIBITS SUBMITTED TO THE BOARD				
A94.05		A67.30		1 ORDER APPOINTING THE BOARD				
				2 APPLICATION FOR REVIEW OF DISCHARGE				
				3 LETTER OF NOTIFICATION				
HEARING DATE		CASE NUMBER		4 BRIEF OF PERSONNEL FILE				
25 JUN 02		FD2002-0050		COUNSEL'S RELEASE TO THE BOARD				
				ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE				
				TAPE RECORDING OF PERSONAL APPEARANCE HEARING				
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE								
REMARKS								
Case heard at Washington, D.C.								
Advise applicant of the decision of the Board, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR								
SIGNATURE OF RECORDER			SIGNATURE OF BOARD PRESIDENT					
INDORSEMENT			DATE: 25 JUN 02					
TO: SAF/MIBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742			FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR. FF WING, 3 <sup>RD</sup> FLOOR ANDREWS AFB, MD 20762-7002					

## AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0050

**GENERAL:** The applicant appeals for upgrade of discharge to Honorable.

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined to exercise this right.

The attached brief contains the available pertinent data on the applicant and the factors leading to the discharge.

**FINDINGS:** Upgrade of discharge to Honorable is denied.

The board finds that neither evidence of record nor that provided by the applicant substantiates an inequity or impropriety, which would justify a change of discharge

**ISSUE:** The applicant states that his discharge was inequitable because it was based on one isolated incident in 13 years of service with no other adverse action. The records indicate the member was convicted in a civilian court of law for arson. Having been convicted of a civil offense, a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial. The applicant was separated with an Under Other Than Honorable Conditions Discharge. The DRB opined that the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the civilian conviction for arson was a significant departure from the conduct expected of all military members. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge.

**CONCLUSIONS:** The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and that the applicant was provided full administrative due process.

In view of the foregoing findings the Board further concludes that there exists no legal or equitable basis for upgrade of discharge, thus the applicant's discharge should not be changed.

Attachment:  
Examiner's Brief

DEPARTMENT OF THE AIR FORCE  
AIR FORCE DISCHARGE REVIEW BOARD  
ANDREWS AFB, MD

(Former TSGT) (HGH TSGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 92/08/18 UP AFR 39-10, para 5-48 (Civilian Conviction). Appeals for General Disch.

2. **BACKGROUND:**

a. DOB: 60/02/05. Enlmt Age: 19 5/12. Disch Age: 32 6/12. Educ: HS DIPL. AFQT: N/A. A-82, E-99, G-99, M-89. PAFSC: 23171 - Graphics Technician. DAS: 91/08/15.

b. Prior Sv: (1) Enlisted as AB 79/07/31 for 4 yrs. Reenlisted as SRA 83/05/06 for 4 yrs. Extended 85/11/02 for 5 months. Svd: 8 yrs 2 months 4 days, all AMS. AMN-(APR Indicates): 79/07/31-80/07/30. A1C - 80/07/31. SRA - 82/06/01. SSGT-(APR Indicates): 83/10/03-84/10/02. APRs: 8, 9, 9, 9, 9, 9, 9, 9.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 87/10/06 for 4 yrs. Extended 89/11/20 for 5 months. Extended 91/06/20 for 17 months. Svd: 04 Yrs 10 Mo 12 Das, of which AMS is 4 yrs 10 months 7 days (excludes 5 days lost time).

b. Grade Status: none.

c. Time Lost: 91/12/13-91/12/18 (5 days).

d. Art 15's: none

e. Additional: none.

f. CM: none.

g. Record of SV: 87/08/18 - 88/08/17 Langley AFB 9 (Annual)  
88/08/18 - 89/08/17 Langley AFB 9 (Annual)  
89/08/18 - 90/01/07 Langley AFB 5 (HAF Dir)  
90/01/08 - 90/11/03 Langley AFB 4 (CRO)  
90/11/04 - 91/06/22 Langley AFB 3 (CRO)

(Discharged from Pentagon)

h. Awards & Decs: AFCM 2/1 OLC, AFAM, AFOUA W/2 OLCS, AFOEA, AFGCM W/3 OLCS, NDSM, AFOSSTR, AFLSAR 2/2 OLCS, NCOPMER, SAEMR, AFTR.

i. Stmt of Sv: TMS: (13) Yrs (00) Mos 13) Das  
TAMS: (13) Yrs (00) Mos 13) Das

**4. BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/01/18.  
(Change Discharge to General)

Issue 1: My discharge was inequitable because it was based on one isolated incident in 13 years of service with no other adverse action. Please review Attachment 1 Personal Statement.

Issue 2: Prior to *my* accepting a hearing before an Administrative Discharge Board. I was offered a General, Under Honorable Conditions discharge type. I declined this in hopes of an Honorable discharge type at the end of my normal enlistment.

ATCH

1. Personal Statement to the Discharge Review Board.
2. Character Witness.
3. VA Cover Letter.

02/05/16/ia



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS AIR FORCE DISTRICT OF WASHINGTON  
BOLLING AIR FORCE BASE DC 20332

Y TC  
ATTN

JA [REDACTED]

14 July 1992

SUBJECT:

Legal Review of AFR 39-10 Discharge Action - TSgt [REDACTED]

TO

1100 ABG/CC

1. The attached record of proceedings is legally sufficient to warrant TSgt [REDACTED] separation from the Air Force for Misconduct - Civilian Conviction, pursuant to AFR 39-10, paragraph 5-48, with an Under Other Than Honorable Conditions discharge without probation and rehabilitation.

2. Background: On 23 April 1992, Lt Col [REDACTED], Commander, Mission Support, 7th Communications Group, notified [REDACTED] that action was being initiated against him for a civilian conviction under AFR 39-10, paragraph 5-48. In her notification letter, Lt Col [REDACTED] recommended the Respondent receive an Under Other Than Honorable Conditions Discharge. In order to determine the merit of the action against TSgt [REDACTED] an administrative discharge board hearing was conducted on 18 June 1992. Following receipt of evidence, argument, and deliberations, the board of officers found the Respondent had been convicted in the Circuit Court of Hampton, Virginia, of the felony charge of burning in the nighttime an unoccupied dwelling. The board also determined a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts Martial. Based on these findings, the board recommended the Respondent be separated with an Under Other Than Honorable Conditions Discharge without an offer of probation and rehabilitation.

3. Evidence for the Government:

a. A certified copy of TSgt [REDACTED] 26 March 1992 conviction of burning in the nighttime an unoccupied dwelling in the Circuit Court of Hampton, Virginia (Gvt Exhibit 3).

b. The written police report and fire investigation, which includes statements by the arresting officers and fire investigators (Gvt Exhibit 4).

c. The oral testimony of Officer [REDACTED] which was given in the course of the board proceedings. After Officer [REDACTED] expertise in fire investigations was established, he testified as to why he believed the fire in question was of a suspicious nature. From his investigation, [REDACTED] was able to

determine that a liquid accelerant such as gasoline had been applied to the floor of the condominium and set afire. Additionally, [REDACTED] testified that the windows of the condominium had been covered by opaque paper and styrofoam, that the attic staircase had been left down, and that there was no sign of forced entry. These factors, [REDACTED] testified, led him to conclude the fire had been deliberately set. [REDACTED] also testified that the Respondent had been apprehended in the vicinity of the condominium at the time of the fire. According to [REDACTED], TSgt [REDACTED] was wearing suspicious clothing and appeared very nervous. Following further investigation, [REDACTED] determined Respondent's motive for setting the fire was an inability to sell the vacant condominium coupled with his mounting financial difficulties.

d. A certified copy of TSgt [REDACTED] 3 June 1992 sentencing to eight years in the Virginia State Penitentiary, which was suspended in lieu of fifteen years probation and restitution of \$14,832.30 (Gvt Exhibit 5).

e. Photographs taken by Officer [REDACTED] which depict the extent of the damage to the condominium (Gvt Exhibit 6).

f. TSgt [REDACTED] past performance evaluations, including a poor EPR recorded just prior to the commission of the offense and a referral EPR which was ordered as a result of the offense (Gvt Exhibit 7).

#### 4. Evidence for the Respondent:

a. An unsworn written statement by TSgt [REDACTED] which states his innocence, claims he will seek an appeal against his conviction, and requests his retention in the Air Force (Res Exhibit A). Throughout the letter, TSgt [REDACTED] emphasizes the contributions he has made to the Air Force during his thirteen year career and argues he can continue to be a productive Air Force member.

b. An unsworn written statement from TSgt [REDACTED] wife which explains his presence in Hampton on the night of the fire and accounts for the unusual clothing he was wearing (Res Exhibit A). According to Ms. [REDACTED] their family had experienced problems with a "stalker" during their time in Hampton, and as a result, Ms. [REDACTED] had asked her husband not to check on the condominium because she feared he would be hurt. Therefore, Ms. [REDACTED] believes her husband drove to Hampton on the night of the fire without her knowledge not because he wanted to set fire to the condominium, but because he did not

want her to worry about him while he checked on the apartment. Also, Ms. [REDACTED] now claims she made the clothing worn by her husband when he was arrested, even though she denied making the outfit when questioned by Inspector [REDACTED] on the night of the fire.

c. Letter:: of appreciation and recommendation from TSgt [REDACTED] past co-workers and supervisors (Res Exhibits B through AW).

5. Errors and Irregularities: I noted no errors or irregularities affecting the substantive rights of the Respondent.

6. SPCM Convening Authority Options: Commander, 1100th Air Base Group, has the following options (see AFR 39-10, para 5-53):

a. Retain Respondent

b. Discharge Respondent with a General Under Honorable Conditions) Discharge and award probation and rehabilitation

c. Discharge Respondent with a General Under Honorable Conditions) Discharge without probation and rehabilitation

d. Recommend that Commander, Headquarters Air Force District of Washington, discharge Respondent with an Under Other Than Honorable Conditions Discharge

e. Recommend that Commander, Headquarters Air Force District of Washington, discharge Respondent and offer him probation and rehabilitation

7. Discussion:

a. Respondent's civilian conviction for arson clearly established a basis for discharge under AFR 39-10, para 5-48. Also, the same or closely related offense is punishable by punitive discharge under the Manual for Courts Martial. Therefore, the board had sufficient reason to recommend TSgt [REDACTED] be discharged from the Air Force Under Other Than Honorable Conditions.

b. Because of the circumstances surrounding the commission of the offense, the board's recommendation should be followed. TSgt [REDACTED] recklessly set fire to his condominium late at night without regard for the safety of the residents of the adjoining units. Moreover, TSgt [REDACTED] clearly intended to conceal his presence in Hampton by wearing an outfit which included a padded shirt, black ski pants and a black knit cap with a wig sewn in to it. Setting this fire was not an accident or a minor offense; rather, it was a pre-meditated operation undertaken by TSgt [REDACTED] in order to cure his financial problems, but which could have resulted in more serious injury to both persons and property.

c. Additionally, TSgt [REDACTED] on the job performance had decreased prior to the incident, and his performance has declined further since his arrest and conviction. His EPR covering 4 November 1990 through 22 June 1991 points to TSgt [REDACTED] numerous hours away from his job and attention to non-duty activities as major impediments to his capable accomplishment of the mission. Apparently, TSgt [REDACTED] Air Force career had ceased to be a priority to him even before his civilian conviction, and his performance suffered as a result.

d. Finally, the separation authority must consider the possibility of appeal in deciding whether to accept and act upon the board's recommendations. While the discharge board may consider the merits of the action and make its recommendations in spite of the possibility of appeal, the general policy is to withhold execution of a recommended discharge for a civilian conviction until the outcome of an appeal is known (see AFR 39-10, paragraph 6-57). However, a check with the Hampton Circuit Court on 7 July 1992, four days after the deadline for filing a timely appeal in TSgt [REDACTED] case, revealed that no appeal had been filed. While this technically does not preclude TSgt [REDACTED] from filing an appeal in the future, it practically assures that the appellate court will refuse to hear his claim. Therefore, the separation authority should not feel bound to suspend its decision because TSgt [REDACTED] might possibly file an untimely appeal sometime in the future.

8. Recommendation: that you recommend to Commander, Headquarters Air Force District of Washington, that TSgt [REDACTED] be discharged from the Air Force with an Under Other Than Honorable Conditions Discharge, without an award of probation and rehabilitation.

[REDACTED]  
Colonel, USAF  
Staff Judge Advocate

Atch  
Board Proceedings





DEPARTMENT OF THE AIR FORCE  
7TH COMMUNICATIONS GROUP  
WASHINGTON DC 20330-6345

REPLY TO  
ATTN OF: MS

29 Apr 92

SUBJECT: Notification Letter - Board Hearing

TO: TSgt [REDACTED]  
Unit: 7th Communications Group, Office Sym: GNEV

1. I am recommending your discharge from the United States Air Force for Misconduct - Civilian Conviction, according to AFR 39-10, under the provisions of paragraph 5-48. Copies of the documents to be forwarded to the separations authority to support this recommendation are attached.

2. My reason for this action is:

On or about 26 Mar 92, you were found guilty of Arson, a felony in the Circuit Court in Hampton, VA.

3. This action could result in your separation with an Under Other Than Honorable Conditions discharge. I am recommending that you receive an Under Other Than Honorable Condition discharge. The commander exercising SPCM jurisdiction or a higher authority will make the final decision in this matter. If you are discharged, you will be ineligible for reenlistment in the Air Force.

4. You have the right to:

- a. Consult legal counsel.
- b. Present your case to an administrative discharge board.
- c. Be represented by legal counsel at a board hearing.
- d. Submit statements in your own behalf in addition to, or in lieu of, the board hearing.
- e. Waive the above rights. You must consult legal counsel before making a decision to waive any of your rights.


5. You have been scheduled for a medical examination. You must report to Malcolm Grove Medical Center, Andrews AFB, MD at 0700 hrs on 1 May 92. You cannot consume any alcoholic beverages 72 hrs prior to this appointment, cannot engage in any type of physical exercise 24 hrs prior to this appointment, and cannot eat any meals 14 hrs prior to this appointment. Also, if you wear contact lenses, do not bring them with you to this appointment.

6. Military legal counsel has been obtained to assist you. An appointment has been scheduled for you to consult Capt [REDACTED] on 4 May 92, at 1000 hrs, at Andrews AFB, MD, Building 1430, Commercial (301) 981-6624. Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service, and is reasonably available as determined according to AFR 111-1. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. Confer with your counsel and reply, in writing within 7 workdays, specifying the rights you choose to exercise. The statement must be signed in the presence of your counsel who also will sign it. If you waive your right to a hearing before an administrative discharge board, you may submit written statements in your own behalf. I will send the statements to the discharge authority with the case file to be considered with this recommendation. If you fail to respond, your failure will constitute a waiver of the right to the board hearing.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 2. A copy of AFR 39-10 is available for your review in the 7th Communications Group Mission Support Section, located in 1D1000. You are required to return AFR 39-10 when your case has been completed.

9. Execute the attached acknowledgment and return it to me immediately.

  
Col, USAF  
Commander, Mission Support

2 Atch  
1. Supporting Documents  
2. Airman's  
Acknowledgment