

TYPE GEN	PERSONAL APPEARANCE		X RECORD REVIEW				
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL				
YES	NO						
	X						
MEMBERS SITTING [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]			VOTE OF THE BOARD				
			HON	GEN	UOHC	OTHER	DENY
							X
							X
							X
							X
ISSUES A59.15, A92.35, A92.17, A94.05, A94.23, A94.25		INDEX NUMBER A59.00	EXHIBITS SUBMITTED TO THE BOARD				
HEARING DATE 02-06-12		CASE NUMBER FD2002-0070	1	ORDER APPOINTING THE BOARD			
			2	APPLICATION FOR REVIEW OF DISCHARGE			
			3	LETTER OF NOTIFICATION			
			4	BRIEF OF PERSONNEL FILE			
				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, and the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR							
SIGNATURE OF RECORDING OFFICER [REDACTED]				SIGNATURE OF BOARD PRESIDENT [REDACTED]			
INDORSEMENT				DATE: 02-06-12			
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, EE WING, 3 RD FLOOR ANDREWS AFB, MD 20762-7002			

AFHQ FORM 0-2077, JAN 00

(EF-V2)

Previous edition will be used.

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0070

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reason and authority for the discharge, and to change their reenlistment code.

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

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

FINDINGS: Upgrade of, change of reason and authority for the discharge, and change of reenlistment code, are denied.

The Board finds that neither the evidence of record or that provided by the applicant substantiates an inequity or impropriety that would justify a change of the discharge.

Issues. Applicant received a general discharge for homosexual conduct. Applicant notes this was an isolated incident in 10 years of otherwise exemplary service and he had no record of any disciplinary actions or misconduct. The records review disclosed member was arrested by civilian law enforcement in the men's restroom of a local park known to be frequented by homosexuals, attempting to engage in a homosexual act with a civilian man, as witnessed by the police officer. He was charged with lewd and lascivious conduct. Although member denied this charge, he pled no contest to a lesser civilian charge of criminal trespass, which the record characterized as "inconsistent with innocence." When recommended for administrative discharge, the member exercised his right to a board hearing, which found he did attempt to commit the homosexual act. Because doing so in a public place is considered an aggravating factor, the Board also recommended member receive a general characterization of service. Current Department of Defense policy renders homosexual conduct incompatible with military service and is a basis for administrative discharge. Furthermore, credible information is based on its source and the surrounding circumstances, those being based on articulable facts, not conjecture or speculation. When those stated circumstances are aggravated, less than fully honorable characterization of service is authorized. In this case, the testimony of the police officer witness to the conduct was apparently deemed credible by the administrative discharge board. Member was afforded and exercised all of his legal rights, and was still found to have committed the alleged behavior. While the Board noted member's otherwise satisfactory service, they could find no inequity, impropriety, or sufficiently mitigating or extenuating circumstances that would warrant an upgrade of the 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

[REDACTED]
(Former TSgt) (HGH TSgt)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 96/08/05 UP AFI 36-3209, para 3.20.1 (Homosexual Conduct). Appeals for Honorable Discharge, to Change the Reason and Authority for Discharge, and to Change the RE Code.

2. **BACKGROUND:**

a. DOB: 66/02/11. Enlmt Age: 20 3/12. Disch Age: 30 5/12. Educ: HS DIPL. AFQT: N/A. A-77, E-62, G-69, M-59. PAFSC: 1C371 - Command and Control Craftsman. DAS: 92/05/03.

b. Prior Sv: (1) AFRes 86/05/17 - 86/09/02 (3 months 17 days) (Inactive).

(2) Enlisted as A1C 86/09/03 for 4 yrs. Extended 88/11/07 for 8 months. Extended 90/03/16 for 12 months. Svd: 5 yrs 8 months 0 days, all AMS.

(3) Enlisted USAFRes as Sgt 92/05/03 for 3 yrs. Svd: 1 yr 9 months 9 days, of which AMS is 5 months 1 day. Sgt - 89/01/03. SSgt - Unknown. No performance reports available.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SSgt 94/02/11 for 6 yrs. Svd: 2 Yrs 5 Mo 25 Das, of which AMS is 2 months 3 days.

b. Grade Status: TSgt - 95/05/01

c. Time Lost: none.

d. Art 15's: none.

e. Additional: 21 JUN 95 - Attempted to engage in homosexual act with another male, in the Chamber of Commerce restroom in Valparaiso, Florida.

f. CM: none.

g. Record of SV: No performance reports available.

(Discharged from Robins AFB)

h. Awards & Decs: AFCEM W/3 DEVS, AFAM W/2 DEVS, AFOUA W/3 DEVS, AFGCM, NDSM, AFOSSTR, AFOSLTR, AFLSAR W/1 DEV, NCOPMER W/1 DEV, AFTR.

i. Stmt of Sv: TMS: (08) Yrs (02) Mos (19) Das

TAMS: (06) Yrs (03) Mos (05) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 02/02/05.

(Change Discharge to Honorable, Change the Reason and Authority for Discharge, and Change the RE Code)

Issue 1: My Discharge was inequitable because it was based on one isolated incident in almost 10 years of service (active and reserve) duty.

Issue 2: I have never given any less than 100% of myself to my country and it's objectives. I am very proud to be an American and continue to provide my services in any which way I can.

Issue 3: I never received any Articles in violation of the UCMJ, demotions or record of disciplinary actions.

Issue 4: I received medals and accolades from every single assignment and operation which I participated in. Thank you for your review of my military records and history and your considerations of my characterization (sic) of discharge to Honorable (from General - Under Honorable Conditions).

ATCH

1. Recommendation for Discharge, 14 Apr 96.
2. Two Character References.
3. Six Letters of Appreciation.
4. Two Civilian Performance Appraisals.
5. DD Form 214.
6. Reserve Order A-200, 22 Jul 96.

02/05/30/ia

FINDINGS AND RECOMMENDATIONS WORKSHEET

The board, after carefully considering all the evidence in the case of U.S. v. [REDACTED] has, in closed session, by secret written ballot, a majority of the voting members concurring, made the following findings and recommendations:

FINDINGS

A. The board finds by a preponderance of the evidence: (check the appropriate sentence)

☒ [REDACTED] did, on or about 21 Jun 95, attempt to engage in a homosexual act with another male, [REDACTED] in the Chamber Of Commerce Park restroom in Valparaiso, Florida.

☐ That none of the allegations are supported by a preponderance of the evidence;

☐ That _____

[NOTE: If you find the respondent did not engage, attempt to engage, or solicit another to engage in (a homosexual act) (homosexual acts), you must go to the Recommendations section and recommend he be retained. If you find he did engage, attempt to engage, or solicit another to engage in a homosexual act, you must make the further findings in Part B below.]

B. ☐ the Board finds that: *DOES NOT FIND THAT ALL FIVE FACTORS EXIST.* [REDACTED]

☐ the act is a departure from the respondent's usual and customary behavior;

☒ the act, under all the circumstances, is unlikely to recur;

☐ the act was not accomplished by use of force, coercion, or intimidation;

☐ under the particular circumstances of the case, the respondent's continued presence in the Air Force is consistent with the interest of the Air Force in proper discipline, good order, and morale; and

☐ the respondent does not have a propensity or intent to engage in homosexual acts.

Bd Ex II

FD-2002-0012

[NOTE: If you find the Respondent has proved all the above five retention criteria, you must go to the Recommendations section and recommend that he be retained. If you find the Respondent has not proved all the above five retention criteria, you must recommend he be discharged and you should determine the appropriate characterization of the discharge.]

C. ☐ The Board finds that the Respondent:

public view. ☒ **(did)** (did not) attempt to engage in a homosexual act openly in

[NOTE: If you do not find the above aggravating factor is present in this case, you may not recommend an Under Other Than Honorable Conditions Discharge. If you find the aggravating factor is present, you may recommend an Under Other Than Honorable Conditions Discharge.]

D. As a result of its findings the board has determined that [REDACTED] ☒ **(is)** (is not) subject to separation from the United States Air Force Reserve.

RECOMMENDATIONS

Consistent with its findings, the board recommends that [REDACTED] should be:
(check the appropriate block)

☐ **Retained** in the United States Air Force Reserve

☒ **Separated** from the United States Air Force Reserve and issued

☐ **An** Honorable Discharge certificate;

☒ **A General** Discharge certificate;

☐ An Under Other Than Honorable Conditions certificate.



DEPARTMENT OF M E AIR FORCE

AIR FORCE RESERVE

FD 2002-0070

29 APR 1996

MEMORANDUM FOR [REDACTED]
204 Cottonwood Court
Niceville FL 32578

FROM: HQ AFRES/DP
155 2nd St
Robins AFB GA 31098-1635

SUBJECT: Notification of Initiation of Separation Action under
AFI 36-3209

1. By this memorandum, separation action is being initiated against you for homosexual conduct. The authority for this separation action is AFI 36-3209, Chapter 3, paragraph 3.20.1. Information regarding your entitlement to submit statements about your case, the lawful usage of such statements and their disclosure is provided in the attached Privacy Act Statement (Atch 1). A description of the reasons for this separation action is set forth in the attached Statement of Reasons (Atch 2) along with supporting documents. AFI 36-3209 is available for your review at your servicing Military Personnel Flight. The types of separation authorized are Honorable, General (Under Honorable Conditions) and Under Other Than Honorable Conditions. The type of separation recommended in your case is a General (Under Honorable Conditions) Discharge.

2. Within 24 hours after you receive this memorandum, you must complete and return the attached acknowledgment of receipt (Atch 3) of this memorandum and the attachments thereto.

3. The following is a summary of your rights:

a. You are entitled to consult with a military legal counsel who is qualified under Article 27(B)(1), Uniform Code of Military Justice (UCMJ), at no cost to you. You may also consult with civilian legal counsel of your choice, but at your own expense. [REDACTED] a Judge Advocate who is qualified under Article 27(B)(1), UCMJ, has been designated to represent you in connection with this separation action. Her mailing address is HQ AFRES/JAS, 155 2nd Street, Robins AFB GA 31098-1635. Her phone numbers are DSN 497-1588, 1-800-458-5391, or (912) 327-1588.

GOVERNMENT EXHIBIT

2

b. You have the right to submit pertinent statements/documents in your behalf which you desire to be considered in the disposition of your case. If you elect to exercise your right to submit statements, and you return the attached form (Atch 4) within 15 days of receipt, you may submit statements or documents at any time during the administrative discharge process. Your decision on requesting or waiving the board hearing does not affect your right to submit statements or documents during the administrative discharge process. The form must be signed either by you or your legal counsel and returned to HQ AFRES/DPM, 155 2nd Street, Robins AFB GA 31098-1635.

c. If you need additional time to respond to this separation action, either you or your legal counsel may submit a written request to HQ AFRES/DPM, 155 2nd Street, Robins AFB GA 31098-1635, for an extension of time, stating why you need the extra time and how much you'll need. The request must be submitted in sufficient time to reach this office within 15 days after receipt of this memorandum.

4. You are eligible for an administrative discharge board. Within 15 days after you receive this memorandum, you may request to have your case heard by an administrative discharge board at this headquarters by completing and returning the attached form (Atch 5) requesting a board hearing. If you desire a board hearing, you must mail the completed form in sufficient time to reach this headquarters within 15 days after your receipt of this memorandum. Otherwise, your right to have your case heard by an administrative discharge board will be considered waived. Within 15 days after you receive this memorandum, you may waive your right to have your case heard by an administrative discharge board by completing and returning the attached form (Atch 6), evidencing your waiver. Information regarding an administrative discharge board is provided at Attachment 7.

5. You are not eligible to apply for transfer to the Retired Reserve.

6. You should note that failure to respond on the selection of one of these options, or to request a delay within 15 days after you receive this memorandum, will constitute waiver of all your rights. This includes the right to have your case heard by an administrative discharge board, and will result in your case being processed on the basis of all the evidence then available.

7. Return envelopes are attached (Atch 8) for your convenience.


Colonel, USAF
Director of Personnel

Attachments:

1. Privacy Act Statement
2. Statement of Reasons w/
Supporting Documentation
3. Acknowledgement of Receipt
4. Selection of Rights
5. ~~Request for~~ Board Hearing
6. Waiver of Board Hearing
7. Discharge Board Info
8. Envelopes (2)

cc:

HQ AFRES/JAS

919 MSS/DPMAR wo Attachments