

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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| NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED] | GRADE A1C | AFSN/SSAN [REDACTED] |
|--|---------------------|--------------------------------|

| TYPE HON | PERSONAL APPEARANCE | X RECORD REVIEW | | | | | | |
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| <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th colspan="2" style="padding: 2px;">COUNSEL</th> </tr> <tr> <td style="width: 50%; padding: 2px;">YES</td> <td style="width: 50%; padding: 2px;">NO</td> </tr> <tr> <td style="text-align: center; padding: 2px;"><input type="checkbox"/></td> <td style="text-align: center; padding: 2px;"><input checked="" type="checkbox"/></td> </tr> </table> | COUNSEL | | YES | NO | <input type="checkbox"/> | <input checked="" type="checkbox"/> | NAME OF COUNSEL AND OR ORGANIZATION | ADDRESS AND OR ORGANIZATION OF COUNSEL |
| COUNSEL | | | | | | | | |
| YES | NO | | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | | | | | | | |

| MEMBERS SITTING | VOTE OF THE BOARD | | | | |
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| | HON | GEN | UOTHC | OTHER | DENY |
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| [REDACTED] | | | | *+ | |

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| ISSUES A94.02, A94.06, A92.22 | INDEX NUMBER A46.00 | EXHIBITS SUBMITTED TO THE BOARD | | |
| | | 1 | ORDER APPOINTING THE BOARD | |
| | | 2 | APPLICATION FOR REVIEW OF DISCHARGE | |
| | | 3 | LETTER OF NOTIFICATION | |
| | | 4 | BRIEF OF PERSONNEL FILE | |
| HEARING DATE 02-11-07 | CASE NUMBER FD2002-0184 | | 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

* Change Reason and Authority to Secretarial Authority.
+ Change Reenlistment Code

Case heard at Washington, D.C.

Advise applicant of the decision of the Board.

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| SIGNATURE OF RECORDER [REDACTED] | SIGNATURE OF BOARD PRESIDENT [REDACTED] |
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| INDORSEMENT | DATE: 02-11-07 |
| 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 |

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0184

GENERAL: The applicant appeals to change the reason and authority for the discharge, and by inference to change his 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: The Board grants the requested relief.

The Board finds that neither the evidence of record or that provided by applicant substantiates an impropriety that would justify a change of discharge. However, based upon the record and evidence provided by applicant, the Board finds the applicant's reason and authority for discharge inequitable.

Issue. Applicant received an Honorable discharge for Homosexual Conduct. The records disclosed two questionable incidents. During the first, applicant was a willing participant; during the second he was sexually assaulted by another male airman who was subsequently discharged with an Under Other Than Honorable Conditions discharge in lieu of trial by court martial, for this offense and others. After a thorough and complete consideration of the information submitted by the applicant and contained in the records, the Board concluded there was sufficient mitigation and extenuation to substantiate changing the reason and authority for the discharge, and to change applicant's reenlistment code. While the Board did not condone applicant's homosexual experimentation during the first incident, they specifically found member's separation under the circumstances to be too harsh in the absence of other misconduct.

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.

However, in view of the foregoing findings, the Board further concludes that the reason and authority for the discharge is more accurately described as Secretarial Authority. The applicant's reason and authority for discharge should be changed to Secretarial Authority under the provisions of Title 10, USC 1553.

Attachment:
Examiner's Brief

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

[REDACTED]

(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a HON Disch fr USAF 94/07/01 UP AFR 39-10, para 5-35.1 (Homosexual Conduct). Appeals for Change in Reason and Authority for Disch.

2. **BACKGROUND:**

a. DOB: 69/07/06. Enlmt Age: 23 0/12. Disch Age: 24 11/12. Educ:HS DIPL. AFQT: N/A. A-93, E-98, G-94, M-94. PAFSC: 2E731 - Telephone Switching Apprentice. DAS: 93/04/14.

b. Prior Sv: (1) AFRes 92/07/29 - 92/10/19 (2 months 21 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as A1C 92/10/20 for 4 yrs. Svd: 01 Yrs 08 Mo 12 Das, all AMS.

b. Grade Status: none.

c. Time Lost: none.

d. Art 15's: none.

e. Additional: LOR, 24 MAR 94 - Sodomy.

f. CM: none.

g. Record of SV: none.

(Discharged from RAF Chicksands)

h. Awards & Decs: AFTR, AFOSLTR, NDSM, BMTHGR.

i. Stmt of Sv: TMS: (01) Yrs (11) Mos (03) Das

TAMS: (01) Yrs (08) Mos (12) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/05/27.
(Change Discharge to Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

FD2002-0184

ATCH

1. Applicant's Letter to the Discharge Review Board.

02/08/06/ia

Letter of Explanation

May/27/2002

To Whom It May Concern:

This letter is to explain the circumstances surrounding my Discharge from the United States Air Force.

At the time of the incident I was stationed at Royal Air Force Chicksands in Bedfordshire England. I was a member of the 450th Intelligence Squadron and my AFSC was 2E731 Telephone Switching Apprentice.

Being a new Airman I was anxious to distinguish myself at my first duty station. As a result of this I volunteered for additional duties. I got assigned to work at the Base Post Office after duty hours. I started working there and met a Senior Airman who worked at the Post Office full time.

After a short while this individual befriended me. One night he showed up to my dorm room and started telling me about his life. It was at this point when this guy told me that he was a homosexual. He also told me that he had the impression that I was. I told him very forcefully that I was not. He started to try and argue the fact and before I harmed this individual I made him leave my room. I immediately quit working at the Post Office and broke off all ties with this Airman.

A couple of months went by and I met the woman that would become my wife. We grew very close and got engaged and picked a date of April second for our wedding. Everything was going great.

One night a sergeant friend and me decided to go down to our NCO club on the base and blow off some stress. The individual that had tried to convince me that I was homosexual showed up at the club. At this point I had already had way too much to drink and the above-mentioned Airman approached me and started to try to talk to me. I grew extremely angry and decided, with the help of a few friends that I had better leave. Being in Intelligence squadron if there was any alcohol related incidents that you would loose your security clearance and have a hard time getting it back. I made my way back to my room and evidently passed out cold.

I was rudely awakened at some time during the night. I was the bay chief and there fore had a room to myself, but at this point in time there was quite obviously someone else in my room. I felt someone on top of me in bed and I quickly shoved the person off. As I started to gain a sense of what was taking place I realized that it was the Airman from the Post Office. I immediately opened the door to my room and forcefully shoved this individual out of room.

The next morning I was still in shock and disbelief and proceeded to go and see my fiancée. I told her everything that had taken place the night before. She knew the individual and became outraged at what had happened. She inquired what I intended to do about the incident. Being new to the military and the legal process I replied that I honestly did not know. She made a suggestion to talk to the First Shirt, I agreed and we planned to go to him at the end of the next duty day.

When we talked to the First Shirt he advised me that the investigation would be difficult and probably turn out unfavorably due to the recently enacted process of "Don't Ask, Don't Tell, Don't pursue". No matter what I said the judgement would be dependant on what the other person involved said. The First Shirt advised me that his hands would be tied but he would do what he could to help. The Commander of my section did have a 3-hour "discussion" with the Colonel to no avail. There was another Captain that stood up for me but this had minimal impact as well.

After all was said and done the Airman from the Post Office got a General Discharge Under Other than Honorable conditions. I received an Honorable Discharge. In statements that some people made it did come out that the mentioned Airman had actually pulled the same stunt on many other Squadron members. All of these individuals had never said a word being afraid of reprisals from the Squadron Commander.

Before I was discharged my fiancée and I got married and I was allowed to stay in country. I have now been married for 9 years and we have 2 wonderful boys ages 8 and 7. We have a home in Tooele county Utah and plan to stay here as long as possible. I am a member in good standing of the Church of Jesus Christ of Latter Day Saints.

I have written this letter in order to explain the circumstances surrounding my discharge. I have the highest hopes that you will let me join the Utah National Guard in whatever position you see fit. If you have any questions or concerns about anything please contact me to help provide clarification.

Both sides of my family have a long and distinguished history of military service. To briefly expand on this one uncle had his hand blown off while returning a German hand grenade, another uncle spent time in a prison camp after capture during battle of the bulge, another uncle served in Korea and Vietnam. He served in Korea with the Navy as a landing craft driver, and in Vietnam with the Army. My father served a 4-year term in the Air Force. My cousin served in the Marines during Desert Storm on board a missile boat.

As long as I can remember all I have ever wanted to do is to serve my Country. I have always been drawn to anything and everything to do with the military. I have read numerous books on the military ranging from first hand accounts of battles, manuals on tactics, and military analytical manuals. Even after the unfortunate incident in the Air Force I have still held the military and its members in the highest of regards. It is my belief that the men and women of the United States Military and National Guard are not

shown an inclining of the amount of respect they deserve. No matter what job they have in the military I feel they are all unsung heroes. With all of the military books that I have read it is clear that anything that happens in the military is a team effort. Every single job is vital in it's own way.

I will close by saying that I know have contacted the American Civil liberties Union, I intend to contact the Judge Advocate General in Maryland, and I am going to contact my Congressman to help get this issue resolved. In short I will do whatever I need to get the issue corrected. I have lived with my Discharge since 1994. I feel that I have been extremely patient (perhaps too much so) and I have served my time. I also view the incident as the fault of the individual and that the end result was the best that my superiors could do, but it is time to put things right. I hope that you will see fit to allow me to serve in the Utah National Guard. I feel that it will give me a newfound pride and bring honor to my family and ancestors.

Respectfully,

A large, dark, irregular redaction mark covering the signature area of the letter.

DEPARTMENT OF THE AIR FORCE
United States Air Forces In Europe

10 JUN 1994

MEMORANDUM FOR 774 ABG/CC

FROM: 774 ABG/JA

SUBJECT: Legal Review of Administrative Discharge--A1C [REDACTED]
FR [REDACTED]

1. BASIS FOR ACTION: On 19 May 94, the Squadron Section Commander, Captain [REDACTED], 450th Intelligence Squadron, RAF Chicksands, recommended A1C [REDACTED] be separated from the Air Force with a General discharge for homosexual conduct pursuant to AFR 39-10, para 5-35.1. This case is processed by the board entitlement procedure. The respondent was given the opportunity to consult counsel and to submit statements. The respondent has submitted a conditional waiver of his board rights contingent upon receiving no less than an Honorable discharge.

2. FACTS: Captain [REDACTED] bases his recommendation on the following:

a. Between on or about 1 May 93 and on or about 30 Jun 93, the respondent engaged in consensual unnatural carnal copulation with SrA [REDACTED], another military member of the same sex, as evidenced by a Letter of Reprimand, dated 24 Mar 94.

b. Between on or about 1 May 93 and on or about 30 Jun 93, the respondent engaged in indecent acts, more specifically he allowed SrA [REDACTED], another military member of the same sex, to rub his exposed genitalia against the respondent's body and to touch his face, lips and hands to the respondent's exposed genitalia, as evidenced by a Letter of Reprimand, dated 24 Mar 94.

3. ERRORS AND IRREGULARITIES: While the respondent is neither an NCO nor served more than six years on active-duty, his board entitlement springs from para 5-37, "(a)ll airmen recommended for discharge for homosexuality are given an opportunity to have the case heard by an administrative discharge board."

4. EVIDENCE FOR THE RESPONDENT:

a. The respondent is 24 years old and enlisted in the Air Force on 20 Oct 92, and has been on continuous active duty since that date. He received the following AQE scores: Administration - 93; Electronics - 98; General - 94; and Mechanical - 94. He is

entitled to wear the Air Force Training Ribbon.

b. The respondent has submitted a conditional waiver of his board rights, contingent upon his receiving no less than an Honorable discharge. He has not submitted any additional documentation or statements to support an Honorable discharge. However, there is no requirement he do so.

c. There is no other derogatory information other than the basis for this discharge. While he did engage in homosexual acts on two occasions, the second incident had some conflicting indicators as to willingness. In both instances, he was a passive recipient, as opposed to actively recruiting or soliciting. He may very well portray himself as a victim of the active initiator--SrA [REDACTED]. The second incident has some indicia of an unwelcome advance and was reported as such. I believe there is insufficient negative information to justify or support a General discharge. The commander also recommends acceptance of the conditional waiver.

5. DISCUSSION:

a. Under AFR 39-10, para 5-35.1, airmen are subject to discharge for homosexual conduct. New policy directives have been issued concerning the compatibility of homosexuals in the military environment, and have been enshrined in IMC 94-1 to AFR 39-10. Airmen who are separated under this provision may have their service characterized as Honorable, General, or Under Other Than Honorable Conditions (UOTHC). A General discharge is warranted when significant negative aspects of the airman's conduct or performance outweigh the positive aspects of the airman's military record.

b. While he is not eligible for probation and rehabilitation (P & R), he may be retained if an administrative discharge board finds he meets the criteria laid out in para 5-351b.

c. A discharge may be characterized as UOTHC only if one of the circumstances set forth in para 5-36c is found to exist. In this particular situation, no aggravating factors exist.

6. CONCLUSIONS:

a. This file is legally sufficient to support discharge pursuant to AFR 39-10, para 5-35.1, for homosexual conduct. The evidence supports an Honorable discharge.

b. P & R are not available in this case.

7. OPTIONS: As the convening authority, you have the following options:

a. Accept the conditional waiver for an Honorable discharge;

b. Reject the conditional waiver and tell the respondent that either an unconditional waiver or a request for a board hearing must be submitted;

c. Return the case file and direct that the discharge action be reinitiated under a more appropriate discharge provision; or

d. Retain the respondent in the Air Force if you believe he meets the criteria set forth in para 5-35a.

8. RECOMMENDATIONS: Accept A1C [redacted] conditional waiver and discharge him with an Honorable discharge.

[redacted]

[redacted], Capt, USAF
Deputy Staff Judge Advocate

I concur.

[redacted]
[redacted] Major, USAF
Staff Judge Advocate

FD 2002-0184

DEPARTMENT OF THE AIR FORCE
Air Intelligence Agency

MEMORANDUM FOR AIC [REDACTED] FR [REDACTED]

19 MAY 1994

FROM: 450 IS/CCQ
Unit 5305
APO AE 09465-6375

SUBJECT: Notification Letter - Board Hearing

1. I am recommending your discharge from the United States Air Force for Homosexual Conduct, according to AFR 39-10, paragraph 5-35.1. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

a. At or near Royal Air Force Chicksands, England, between on or about 1 May 1993 and on or about 30 June 1993, you committed sodomy with Senior Airman [REDACTED] for which you received a letter of Reprimand, dated 24 Mar 94.

b. At or near Royal Air Force Chicksands, England, between on or about 1 May 1993 and on or about 30 June 1993, you committed indecent acts with Senior Airman [REDACTED] to wit: you allowed Senior Airman [REDACTED] to rub his exposed genitalia against your body and to touch his face, lips and hands to your exposed genitalia, for which you received a letter of reprimand, dated 24 March 1994.

3. This action could result in your separation with a General discharge. I am recommending that you receive a General 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 774 ABG Clinic, at 0830 on 24 JUN 1994

6. Military legal counsel, Capt [REDACTED] RAF Alconbury, DSN 223-2631, has been obtained to assist you. An appointment has been scheduled for you to consult him on 24 MAY 1994 at 1500 hours. 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 use in the orderly room.

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

[REDACTED]
[REDACTED], Capt, USAF
Commander, Squadron Section

Attachments

1. Supporting Documents - for the reason for discharge
LOR, dated 24 Mar 94
2. Airman's Receipt of Notification Letter