

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE AB	AFSN/SSAN [REDACTED]
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TYPE HON	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	
	X	

MEMBERS SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X
[REDACTED]					X

ISSUES A46.01, A93.09	INDEX NUMBER A46.00	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 02-12-20	CASE NUMBER FD2002-0272	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.

DD Form 149 submitted. Advise applicant the case will be forwarded to the AFBCMR for further processing.

SIGNATURE OF RECORDING OFFICER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 02-12-20
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

FD2002-0272

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reason and authority for the discharge, and 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: 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 making a homosexual admission. Applicant now states this was untruthful, and he made the statement in order to get out of the Air Force due to his and his wife's dissatisfaction with the military medical system following a miscarriage. The record disclosed member made a sworn written statement in which he admitted being bi-sexual and having confusion about his sexuality and ability to serve in the Air Force. This statement constituted a rebuttable presumption that member would engage in such conduct, or attempt or intend to. At the time of the discharge, member waived his right to have his case heard by an administrative discharge board, or submit additional statements in his own behalf. He in fact submitted a waiver conditioned upon receipt of no less than an Honorable discharge, which is what he received. The Board 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]
[REDACTED]
(Former AB) (HGH AB)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a HON Disch fr USAF 00/10/09 UP AFI 36-3208, para 5.36.2 (Homosexual Conduct). Appeals to Change Discharge Reason and Reentry Code.

2. **BACKGROUND:**

a. DOB: 79/08/11. Enlmt Age: 20 6/12. Disch Age: 21 1/12. Educ: HS DIPL. AFQT: N/A. A-83, E-81, G-82, M-85. PAFSC: 2A612 - Aerospace Ground Equipment Helper. DAS: 00/05/08.

b. Prior Sv: (1) AFRes 00/02/28 - 00/03/21 (24 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 00/03/22 for 6 yrs. Svd: 0 Yrs 6 Mos 18 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: MFR, 20 SEP 00 - Homosexual admission.

f. CM: None.

g. Record of SV: None.

(Discharged from Sheppard AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (0) Yrs (7) Mos (12) Das
TAMS: (0) Yrs (6) Mos (18) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/067/18.
(Change Reason for Discharge and Reentry Code.)

Issue 1: My wife was pregnant. She woke up one morning in July 2000 covered in blood. I took her to the hospital. They said they think she might be having a miscarriage. They sent us home. Later that afternoon she started having severe cramps and was still bleeding. We went back to the hospital. They still said the same thing. They gave her Tylenol 3 to deal with the pain & sent us home again. They refused to do a DNC for 30 days. I went to the IG and

got permission to go to a civilian doctor. The military refused to send him records. Finally after a day he found the baby had died now and performed a DNC. I then reported the military doctors to the IG for malpractice. After that I was washed back, had my duty station changed and moved me back on base. I was told my duty station was going to be changed to Guam where I could not have my wife with me. So then I started talking to the IG, ADC & Chaplains trying to get out. They all told me there was no way out unless I wanted a dishonorable. Somebody then told me to say I was gay. I said I can't say that I am married. I then asked the ADC what would happened (sic) if I said I was gay. He said don't say another word. I was out 2 weeks later. Everything happened so fast that with the stress and everything that was going on I really didn't even realize what a big mistake I was making. I am wanting to re-enlist in the military. I do want to make a career out of it. That is why I originally signed up for six years. Any help you can provide getting me back in would be greatly appreciated. Thank you.

ATCH

1. Letter of Support.

02/10/21/cr

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

28 Sep 00

MEMORANDUM FOR 82 TRG/CC

FROM: 82 TRW/JA

SUBJECT: Legal Review, Recommendation for Discharge - [REDACTED]
361 TRS

1. We have reviewed this discharge case file and find it legally sufficient to support discharge. We recommend that you accept the respondent's conditional waiver of his right to a board hearing and direct that the respondent be separated with an honorable discharge in accordance with AFI 36-3208, paragraph 5.36.2.2 (homosexual conduct). In accordance with paragraph 5.45, a member approved for discharge for homosexual conduct is not eligible for probation and rehabilitation as provided in chapter 7.
2. Basis for Action: On 26 Sep 00, the 361 TRS/CC notified [REDACTED] that he was recommending that [REDACTED] be discharged from the service due to his statement that he is bisexual. The basis for this action is the commander's administrative determination that the respondent has a propensity or intent to engage in homosexual acts.
3. Evidence for the Commander. The preponderance of evidence in the case file supporting the commander's recommendation consists of the respondent's written statement that he is a bisexual. On or about 20 Sep 00, the respondent wrote a letter stating he ([REDACTED]) was bisexual, or words to that effect. Pursuant to AFI 36-3208, paragraph 5.36.1, a statement by a member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation, not because it reflects the member's sexual orientation, but because the statement indicates a likelihood that the member engages in, or will engage in, homosexual acts.
4. Additional Information. The respondent is 21 years old. He began his present enlistment on 22 Mar 00 and was assigned to his unit on 8 May 00. His ASVAB scores are above average. The respondent is entitled to wear the Air Force Training Ribbon. He has consulted counsel and waived his rights associated with an administrative discharge board hearing, contingent on his receipt of an honorable discharge. The respondent has not, however, submitted further statements for your consideration.
5. Commander's Options. In accordance with AFI 36-3208, your options are to
 - a. Direct [REDACTED] retention based on evidence insufficient to support discharge;
 - b. Direct he receive an honorable discharge;

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c. Reject the waiver and direct that a board be convened to consider the case.

6. We note no administrative errors of legal significance, and we concur with the commander's recommendation for an honorable discharge in this case.

7. If you have any questions, please contact [REDACTED].

[REDACTED], USAF
Staff Judge Advocate

Attachment:
Case File

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

SEP 26 2000

MEMORANDUM FOR [REDACTED]

FROM: 361 TRS/CC

SUBJECT: Notification Memorandum--Board Hearing

1. I am recommending your discharge from the United States Air Force for Homosexual Conduct according to AFPD 36-32, Military Retirements and Separations, and AFI 36-3208, Administrative Separation of Airmen, under the provisions of paragraph 5.36.2.2. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.
2. My reason for this action is you did, at or near Sheppard AFB TX, on or about 20 Sep 00, make a statement to [REDACTED] that "I am a bisexual" or words to that effect. In addition, you did, on or about 20 Sep 00, after being advised of the Department of Defense policy on bisexual conduct and rights under Article 31, UCMJ, state in writing that you are a bisexual. Your statement creates a rebuttal presumption that you engage in, attempt to engage in, have the propensity to engage in, or intend to engage in homosexual acts.
3. This action could result in your separation with an under honorable conditions (general). I am recommending that you receive an honorable discharge. The commander exercising Special Court-Martial 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 and will probably be denied enlistment in any component of the armed forces.
4. You have the right to:
 - a. Consult legal counsel.
 - b. Present your case to an administrative discharge board. You are entitled to present evidence to rebut the presumption that you engage in, attempted to engage in, have the propensity to engage in, or intend to engage in homosexual acts.
 - 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 were scheduled for a separation physical on 27 Sep 00.

6. Military legal counsel, [redacted], Area Defense Counsel, at Bldg 1638, duty phone 6-2186, has been obtained to assist you. An appointment has been scheduled for you to consult him on 27 Sep 00 1030 hrs, Bldg 1638. 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 AFI 51-201, Administration of Military Justice. 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 of 1974. A copy of AFI 36-3208 is available for your use at the 361st Training Squadron Student Administration office.

9. If you request a board and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.

10. If you received advanced educational assistance, special pay, or bonuses, and have not completed the period of active duty you agreed to serve, you may be subject to recoupment. Where recoupment is dependent on a finding that the separation is voluntary or because of misconduct, the discharge board (or the separation authority if the board is waived) will make a specific written finding whether the homosexual conduct constitutes a basis for recoupment. A separation for homosexual conduct is voluntary if the member made the homosexual statement; committed, attempted or solicited the homosexual act; or entered or attempted to enter the homosexual marriage for the purpose of seeking separation. Circumstantial evidence may be considered in determining the member's intent.

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

[redacted signature]

[redacted], USAF
Commander

Attachments:

- 1. Statement, [redacted] 20 Sep 00
- 2. MFR, [redacted] 20 Sep 00
- 3. AETC Form 125A,
- 4. Student Training Report,
- 5. LAFB Form 205, 6 May 00
- 6. Airman's acknowledgments [redacted]