

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

TYPE UOTHC	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	NO	LAW OFFICES OF [REDACTED]
<input checked="" type="checkbox"/>		

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

ISSUES A94.06, A97.08, A94.11, A94.02, A92.21	INDEX NUMBER A75.00	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 24 APR 03	CASE NUMBER FD2002-0032	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 RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.

REMARKS

Case heard at Andrews AFB, MD

Advise applicant of the decision of the Board and his right to appeal to the Board for Correction of Military Records.

SIGNATURE OF RECORDER: _____ SIGNATURE OF BOARD PRESIDENT: _____

INDORSEMENT

DATE: **28 APR 03**

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD2002-0032

GENERAL: The applicant appeals for upgrade of discharge to Honorable and for a change in the Reason and Authority for the discharge. The applicant's case was considered by the Discharge Review Board (DRB), at Andrews AFB, MD, on April 24, 2003. The applicant appeared before the DRB with counsel. The attached brief contains available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: The DRB grants in part and denies in part the requested relief. The DRB finds that the evidence of record and that provided by the applicant substantiates, in part, an inequity justifying an upgrade of the discharge. The applicant's discharge will be upgraded to General (under honorable conditions).

ISSUES: The applicant was discharged with an under other than honorable conditions (UOTHC) service characterization from the Air Force pursuant to a request to resign in lieu of court-martial. The applicant had been accused of being absent without leave (AWOL) and of making several false official statements to his superiors in connection with his AWOL. The applicant subsequently submitted a resignation in lieu of court-martial asking to be allowed to resign with a UOTHC service characterization rather than face a court-martial. His request was granted. The applicant now contends that he was treated harshly, that the characterization was unfair in light of his otherwise honorable service, and that the accusations should not have been the subject of a court-martial.

CONCLUSIONS: The DRB concludes that the discharge was not completely consistent with the procedural and substantive requirements of the discharge regulation, though the action was within the discretion of the discharge authority.

The DRB carefully reviewed the facts and circumstances surrounding the case, to include the applicant's testimony concerning his recollection of the incidents that led to his eventual request to resign rather than face a court-martial. The most compelling factor, in the view of the DRB, was the seriousness of the applicant's misconduct. More specifically, it was the applicant's perpetual dishonesty that was of greatest concern to the DRB. Making a false official statement to one's supervisor is, of course, quite serious. The false statements made by the applicant in an attempt to conceal his misconduct, particularly those made to the base commander, fatally compounded the severity of his wrongdoing. Such misbehavior for an officer is, quite simply, dishonorable. Even when given the opportunity to "set the record straight" during his interview with agents from the Office of Special Investigations, he continued the deception. The DRB also concluded that the applicant was well aware of the leave policy, having been thoroughly counseled by his supervisor weeks before, and that he engaged in his misconduct in an effort to avoid being charged for 5 days of leave. Indeed, notwithstanding the applicant's claim that he had hoped "to the last minute" that his friend would be able to join him in Sicily, the DRB found that the applicant had a long standing plan to meet his friend in Germany and to mislead his supervisor regarding his plans for leave. Despite the gravity of the misconduct, given the sincerity of the applicant's motivation for seeking an upgrade, the applicant's post-service accomplishments, and the circumstances of the case, the DRB concluded that the characterization of the applicant's service was too harsh.

Having found an inequity in the severity of the characterization of the discharge, the DRB upgraded the characterization of the discharge to General (under honorable conditions) but declined to upgrade the discharge to Honorable or to change the Reason and Authority for the discharge.

Attachment:
Examiner's Brief

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

(Former CAPT) (HGH CAPT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 91/05/20 UP AFR 36-12 (Resignation in Lieu of Court Martial). Appeals for Honorable and Change Reason for Authority for Disch.

2. **BACKGROUND:**

a. DOB: 63/05/16. Enlmt Age: 25 8/12. Disch Age: 28 0/12. Educ: BACHELOR DEGREE. AFQT: N/A. A-N/A, E-N/A, G-N/A, M-N/A. PAFSC: 8824 - Judge Advocate. DAS: 89/03/16.

b. Prior Sv: (1) AFRes 89/01/18 - 89/03/14 (1 month 27 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Appointed to 1Lt and EAD 89/03/15. Svd: 02 Yrs 02 Mo 06 Das, all AMS.

b. Grade Status: Captain - 89/09/15

c. Time Lost: none.

d. Art 15's: none.

e. Additional: none.

f. CM: none.

g. Record of SV: 89/03/15 - 89/12/28 Langley AFB MS (Semi-Annual)
89/12/29 - 90/06/28 Langley AFB MS (Semi-Annual)
90/06/29 - 90/12/28 Comiso AB DNMS (Semi-Annual) REF

(Discharged from McGuire AFB)

h. Awards & Decs: AFTR, AFOUA, NDSM, AFAM, AFOSSTR.

i. Stmt of Sv: TMS: (02) Yrs (04) Mos (03) Das
TAMS: (02) Yrs (02) Mos (06) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 02/01/23.

(Change Discharge to Honorable & Change the Reason and Authority for Discharge)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Brief In Support of Application.
2. Six Letters of Recommendation.

02/04/26/ia

BEFORE THE AIR FORCE
DISCHARGE REVIEW BOARD

IN RE APPLICATION OF

[REDACTED]
[REDACTED]

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Docket No. _____

BRIEF IN SUPPORT OF APPLICATION
FOR
UPGRADE OF DISCHARGE

1) Pursuant to 10 USC 1553, and Department of Defense Directive 1332.28, codified at 32 CFR 70 [REDACTED] hereby submits this application to upgrade his discharge from Other Than Honorable (OTH) to Honorable, and to change the reason for his discharge to a voluntary resignation. This request is made for proprietary and equitable reasons.

[REDACTED] is an attorney in Tampa, Florida, and a former Captain in the United States Air Force Judge Advocate General's (JAG) Corps. He served slightly over two years on active duty, at Langley AFB, VA, and at Comiso Air Base, Italy. With the exception of the incident that gave rise to his release from active duty, he served admirably, as witnessed by his Officer Performance Reports (OPRs).

3) [REDACTED] resigned his commission in lieu of court-martial, as a result of charges that were brought up against him in Comiso. If it were not for the serious nature of these allegations, this incident would almost be comical. However, because of the deleterious affect this has had on his life, the incident is tragic.

4) While serving as a legal assistance officer in Comiso [REDACTED] planned on taking leave over the Christmas holidays. He had taken leave one time prior to that, and not at Comiso. He advised his supervisor of his intentions, as was required in order to cover his job while he was gone. [REDACTED] absence during the holiday period was certainly no mystery.

[REDACTED] planned on leaving Friday morning for a train ride to Munich, Germany, where he was to meet his fiancée, who had flown over from the states. His plan was to remain on leave through the Christmas holidays, and return immediately after the New Year.

6) As he was packing to leave [REDACTED] noticed that his train ticket, written in Italian, required a late Thursday, not early Friday, departure. As he would be gone either way on Friday, he did not believe it was relevant, and he left Italy.

7) On Wednesday, December 26, [REDACTED] received a call at the front desk of the hotel where he was staying, in Garmisch, Germany. One of his co-workers was calling, and stated that his supervisor [REDACTED] wanted to know where his leave papers were.

8) At this point, [REDACTED] knew he had made a huge mistake, and forgot to turn in leave papers. Quite naturally, he assumed he would simply turn in the papers when he returned. It was obvious that everyone knew where he was (as evidenced by the phone call) so he believed it simply was not a problem.

9) [REDACTED] then spoke to his supervisor. To his surprise, the supervisor stated that his absence without leave papers was quite serious, even though the supervisor admitted he knew where [REDACTED] was. His supervisor advised that he had been placed on an AWOL status, and should return immediately. Even a call to the base commander did not resolve the situation.

10) [REDACTED] hurriedly departed Germany, at considerable personal expense, and left his girlfriend. He returned to Italy, and was told by an Area Defense Counsel that [REDACTED] was pushing the matter extremely hard.

11) The discrepancy in this case seems to stem from the fact that [REDACTED] believe [REDACTED] would not leave base until either Monday, December 24, or immediately after Christmas. He apparently believed that [REDACTED] deceived him by leaving early.

12) When he returned to Italy, [REDACTED] was questioned by OSI agents (the same agents he had worked with in the past.) In short, he was treated as a criminal. At this point, he admittedly made a huge error in judgment when he told OSI that his decision to leave on Thursday was a last minute choice. Apparently, OSI agents believed this was untrue, and an attempt to cover up the desire to not expend leave. As [REDACTED] had over thirty days of leave at the time, I submit that the evidence does not support this belief.

13) The supporting documents that are contained within [REDACTED] official file include a letter accusing [REDACTED] of telling a series of premeditated lies to get out of this mess. I submit that such a conclusion is not only not supported by the evidence, it defies logic. Why in the world would [REDACTED] lie to his commander and his supervisor about going on leave, when they all knew he was on leave? It simply does not make sense.

14) [REDACTED] resigned in lieu of a potential court-martial and, as such, received an other than honorable discharge. I submit that this discharge was erroneous, and unfair. [REDACTED] spoke with the Area Defense Counsel (ADC) before submitting this request. The ADC advised him (erroneously) that a court-martial conviction would have led to the loss of his license to practice law. Such is simply not the case. In addition, the

ADC told him that his supervisor, [REDACTED] was trying to make an example out of [REDACTED] in order to impress the base commander, and obtain a strong OPR.

15) The decision to process [REDACTED] with an OTH discharge, and the threat to prosecute him at court-martial, were clearly an unwarranted over reaction to an otherwise mild breach of conduct. I certainly do not wish to downplay his role in this incident, and he has accepted responsibility for it, but an OTH is a draconian punishment.

16) [REDACTED] had a number of officers come to his defense during this incident. Those letters are attached. As I am sure this Board is aware, on a small base such as Comiso, it required exceptional courage for these officers to come forward in this manner. However, [REDACTED] performance of his duties clearly warranted such intervention, and these officers were willing to take whatever risk was necessary to ensure that justice was done. Unfortunately, it was not. These statements are attached to this petition.

17) The OTH is contrary to law, in that the evidence did not comport to the allegations, and an OTH is outside the normal range of punishments for what occurred in this case. I also submit this as a matter of equity, as it appears clear that, even if the allegations were true, such punishment was not warranted for such an exceptional officer.

18) Faced with the potential loss of his law license, and a supervisor intent on court-martialing him and making an example out of him, [REDACTED] chose the path of least resistance. Perhaps at the time such a move made sense. However, in hindsight it was not the right decision. The ineradicable scar of an OTH is simply uncalled for under the circumstances of this case. Since his discharge, [REDACTED] has returned to the private practice of law, and moved on with his life. However, he is proud of the time he served on active duty, and proud of his accomplishments. He should be able to tell others of his work as an Air Force Officer, and should be able to tell them that he received an Honorable Discharge. I thank you for taking the time to consider this matter, and look forward to presenting this case in person before the Board.

kindest Regards,

[REDACTED]

WEC/pc