

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

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 A01.13, A92.37	INDEX NUMBER A65.00	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	
			COUNSEL'S RELEASE TO THE BOARD	
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE	
			TAPE RECORDING OF PERSONAL APPEARANCE HEARING	
HEARING DATE 03-04-02	CASE NUMBER FD2002-0337			

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.

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

SIGNATURE OF RECORDER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 03-04-03
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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

FD2002-0337

GENERAL: The applicant appeals to change the reason and authority for her discharge and to change her 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: Change of discharge reason and authority and reenlistment code are denied.

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

Issues. Applicant received an honorable discharge for making a homosexual admission. The records review disclosed member made a statement she was homosexual; subsequent commander-directed inquiry disclosed she had serious romantic relationships with three other females, one of which occurred while she was in military service. Member allegedly bought this partner an engagement ring and intended to consummate the relationship with "marriage." Additionally, during the enlistment under review, member had an Article 15 for absenting herself from her place of duty over a 3-day period. While away, member was staying with her partner. When recommended for administrative discharge, the member waived her right to a board hearing, or to submit statements in her own behalf. Member now contends her statements were false, made for the purpose of being discharged from the service so she could go home to be with her ill mother. The Board notes that applicant had the opportunity to rebut the presumption she would engage in homosexual conduct at the time of her discharge but elected to remain silent on this point. Furthermore, she provided no documented evidence of her mother's illness to substantiate her contentions now, or of anything sufficient to substantiate her homosexual claims were false. The Board could find no inequity, impropriety, or sufficiently mitigating or extenuating circumstances that would warrant an upgrade of the discharge.

The applicant cited her desire to return to military service. While the Board commends applicant on this desire, and is sympathetic to the impact a General discharge has on her reenlistment code, this is not a matter of equity or propriety that warrants an upgrade.

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 AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a HON Disch fr USAF 26 MAY 00 UP AFI 36-3208, para 5.36.2 (Homosexual Admission). Appeals for Change to Separation Reason, Reentry Code, and Authority for Discharge.

2. **BACKGROUND:**

a. DOB: 10 FEB 79. Enlmt Age: 20 7/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A. A-95, E-50, G-36, M-26. PAFSC: 2S031 - Supply Management Apprentice. DAS: 16 MAR 00.

b. Prior Sv: (1) AFRes 08 OCT 99 - 20 OCT 99 (13 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 21 OCT 99 for 4 yrs. Svd: 0 Yrs 7 Mos 6 Das, of which AMS is 0 Yrs 7 Mos and 2 Das (Ex: 4 Das lost time)

b. Grade Status: AB - 09 MAY 00 (Article 15, 09 MAY 00)
AMN - Unknown

c. Time Lost: 29 Apr 00 - 2 May 00 (4 Days)

d. Art 15's: (1) 09 MAY 00, Fairchild AFB, WA - Article 86. You, did, on or about 29 Apr 00, without authority, absent yourself from your organization, and did remain so absent until on or about 1 May 00. Reduction to the grade of AB, forfeiture of \$150.00 pay per month for 2 months, and 30 days restriction. (No appeal) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: None.

(Discharged from Fairchild AFB)

h. Awards & Decs: AFTR

i. Stmt of Sv: TMS: (0) Yrs (7) Mos (15) Das
TAMS: (0) Yrs (7) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 03 AUG 02.

(Change Separation Reason, Reentry Code and Authority for Discharge)

Issue 1: My name is [REDACTED]. I am 22 years old and I live at 3343 Union Branch Road, Petersburg, Virginia. I am writing this letter to express my concern for my returning to active military duty. I was discharged from the United States Air Force in May of 1999. I was discharged honorably but the reason was false. My mother, [REDACTED] became very ill with a disease called Anti-Thrombin III. During this time she was also pregnant with my 3 year old sister. While my mother was sick with this disease I entered the Air Force. I successfully completed basic training and Tech School at Lackland Air Force Base, Texas. When I first arrived at my permanent duty station in Spokane Washington, I discovered that my mother's disease worsened. I made every attempt to leave the military to come home or at least be stationed at a base closer to home to aid in my mother's sickness. I wrote letters to the First Sergeant. He further instructed me that he would help me get home as much as possible. He further instructed me to write a letter to the headquarters in Texas and that that (sic) would be my best bet in getting home. I wrote letters, sent information on the disease and memos from doctors. I received a response later on that my plea had been rejected. I was so desperate to get home to my mother that I would resort to doing anything. So, I went to the Sergeant with a false plea. I falsely committed homosexuality to get home. I felt that was the only way to surely be discharged. In May of 1999 they sent me home. I've since been here and my mother has gotten better and is now able to go on with her life without my assistance. I feel terrible for what I have done and I wish that I had not ended my military career. The military helped to better me and made my life 100% better. I desperately want to fulfill my career goals and dreams and I feel that I would be able to do that if I am able to rejoin the military. I hope you consider everything I have said and return with positive responses. Thank You.

ATCH

1. DD Form 149.

15 NOV 02/cr



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92ND AIR REFUELING WING (AMC)
FAIRCHILD AFB WA 99011-8517

MEMORANDUM FOR 92 ARW/CC

FROM: 92 ARW/JA

26 MAY 2000

SUBJECT: Legal Review of AFI 36-3208, *Administrative Separation of Airmen*
Administrative Discharge [REDACTED]

1. I have reviewed the proposed involuntary separation action concerning [REDACTED], the respondent, and find it legally sufficient to support involuntary discharge for making a statement that she is homosexual under AFD 36-32 and AFI 36-3208, paragraph 5.36.2.

2. Background: On 23 May 2000, the 92 SUPS/CC initiated this separation action against the respondent for making a statement that she is homosexual. He recommends an honorable discharge. The respondent acknowledged notification of this action on 23 May 2000.

3. The following misconduct supports this discharge which is warranted by the evidence:

[REDACTED] wrote a letter dated 3 May 00 stating that she is homosexual. An inquiry officer was assigned on 9 May 00. The investigation disclosed that she has had at least three serious romantic relationships with female partners. Two of the relationships were prior to her enlistment and a current relationship started before she entered basic training. In her testimony, [REDACTED] disclosed that she bought an engagement ring for [REDACTED] and then returned it due to problems in their relationship. In a recent trip home, she stayed with [REDACTED] and received an Article 15 for extending her leave without authorization (AWOL). [REDACTED] had pictures of [REDACTED] and Bisexual/Gay/Lesbian Against Discrimination (BGLAD) stickers displayed in her room. The investigating officer [REDACTED] found evidence to support voluntary declaration of [REDACTED] homosexuality and recommends discharge under AFI 36-3208.

4. In addition to the allegations forming the basis for this discharge, the following action has been taken against AB Ledbetter:

[REDACTED] did, on or about 29 Apr 00, without authority, absent herself from her organization, to wit: 92d Supply Squadron, located at Fairchild Air Force Base, Washington, and did remain so absent until on or about 1 May 00. For this action, she received an Article 15 dated 9 May 00. The punishment consisted of a reduction to the grade of AB, forfeiture of \$150 pay per month for two months, and 30 days restriction to Fairchild Air Force Base, Washington.

5. Evidence favorable to [REDACTED] includes the following:

a. This 21-year old airman has been on active duty for 7 months. She began her current term of enlistment on 21 Oct 99. Her military record contains no performance report.

b. The respondent waived her rights to an administrative discharge board and the remainder of her days to respond and did not submit matters.

6. Discussion: By a preponderance of evidence, a basis for discharge exists for making a statement that [REDACTED] is homosexual pursuant to paragraph 5.36.2 of AFI 36-3208. The prohibition against homosexual conduct is a long-standing element of military law that continues to be necessary in the unique circumstances of military service. The armed forces must maintain personnel policies that exclude persons whose presence in the armed forces would create an unacceptable risk to the armed forces' high standards of morale, good order and discipline, and unit cohesion that are the essence of military capability. Homosexual conduct is grounds for separation from the military service under the terms set forth in paragraph 5.36.2. Thus, a statement by a member that they are homosexual creates a rebuttable presumption that they engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. There has been no rebuttal to this presumption. In fact, the facts of the investigation bolster the presumption. The member is board entitled and may present their case to an administrative discharge board. The 92 SUPS/CC recommends an honorable discharge. I concur; [REDACTED] should be discharged from the military with an honorable discharge. Even though the respondent has a prior Article 15, it alone would not warrant discharge.

7. As the special court-martial convening authority, you may:

a. Accept the unconditional waiver of a board hearing and approve the respondent's request with an honorable or general discharge.

b. Reject the waiver and convene a discharge board.

8. Recommendation: Accept the unconditional waiver and approve an honorable discharge.

[REDACTED]

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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 92D AIR REFUELING WING (AMC)
FAIRCHILD AIR FORCE BASE WASHINGTON

MAY 23 2000

MEMORANDUM FOR [REDACTED]

FROM: 92 SUPS/CC

SUBJECT: Notification Letter--Board Hearing

1. I am recommending your discharge from the United States Air Force for making a statement that you are homosexual. The authority for this action is AFPD 36-32 and AFI 36-3208, under the provisions of paragraph 5.36.2. Copies of the documents to be forwarded to the separation authority to support this recommendation are attached.

2. My reasons for this action are:

You wrote a letter dated 3 May 00 stating that you are a homosexual. An inquiry officer was assigned on 9 May 00. The investigation disclosed that you have had at least three serious romantic relationships with female partners. Two of the relationships were prior to your enlistment and a current relationship started before you entered basic training. In your testimony you disclosed that you bought an engagement ring for [REDACTED] and then returned it due to problems in your relationship. In a recent trip home, you stayed with [REDACTED] and received an Article 15 for extending your leave without authorization (AWOL). You had pictures of [REDACTED] and Bisexual/Gay/Lesbian Against Discrimination (BGLAD) stickers displayed in your room. The investigating officer, 2d Lt Erin House, found evidence to support voluntary declaration of your homosexuality and recommends discharge under AFI 36-3208.

3. In addition to the allegations forming the basis for this discharge, the following action has been taken against you:

You did, on or about 29 Apr 00, without authority, absent yourself from your organization, to wit: 92d Supply Squadron, located at Fairchild Air Force Base, Washington, and did remain so absent until on or about 1 May 00. For this action, you received an Article 15 dated 9 May 00. The punishment consisted of a reduction to the grade of AB, forfeiture of \$150 pay per month for two months, and 30 days restriction to Fairchild Air Force Base, Washington.

4. This action could result in your separation with an honorable or general discharge. I am recommending that you receive an honorable 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 and will probably be denied enlistment in any component of the armed forces and any special pay, bonus, or education assistance funds may be subjected to recoupment.

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5. You have the right to:
 - a. Consult legal counsel.
 - b. Present your case to an administrative discharge board and 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.
6. You have previously been scheduled for a medical examination. Complete all follow up appointments.
7. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult [REDACTED] 247-2918, at _____ hrs on _____. 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. 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.
8. Confer with your counsel and reply, in writing, within 7 workdays, [date] 2 June 00 specifying the right 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 a written statement in your own behalf. I will send the statement 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.
9. 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 your unit orderly room.
10. 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.
11. 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 subjected to recoupment.

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



Attachments:

1. Report of Inquiry dated 12 May 00 (19 pages)
2. Article 15 dated 9 May 00 (3 pages)
3. MFR by [REDACTED] dated 2 May 00 (1 page)
4. AF 988, Leave Request/Authorization dated 12 Apr 00 (1 page)
5. MFR by [REDACTED] dated 2 May 00 (1 page)
6. MFR by [REDACTED] dated 2 May 00 (1 page)
7. MFR by [REDACTED] dated 1 May 00 (2 pages)
8. MFR by [REDACTED] dated 1 May 00 (1 page)
9. Response to Article 15 dated 9 May 00 (1 page)