







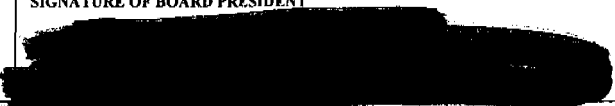


AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) 		GRADE SGT	AFSN/SSAN 		
TYPE	PERSONAL APPEARANCE		X RECORD REVIEW		
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION		ADDRESS AND OR ORGANIZATION OF COUNSEL	
YES	NO				
	X				
MEMBERS SITTING			VOTE OF THE BOARD		
			HON	GEN	UOTHC
					X
					X
					X
					X
					X
ISSUES A94.01		INDEX NUMBER A61.00		EXHIBITS SUBMITTED TO THE BOARD	
HEARING DATE 12 FEB 03		CASE NUMBER FD2002-0356		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
				5	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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.					
SIGNATURE OF RECORDER 			SIGNATURE OF BOARD PRESIDENT 		
INDORSEMENT				DATE: 12 FEB 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		

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD02-0356

GENERAL: The applicant appeals for upgrade of discharge to Honorable.

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

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

FINDINGS: Upgrade of discharge is denied.

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

ISSUE: Applicant does not contest his discharge. He states that he had served over 9 years honorably, and on the date of his arrest, he was on his last day of terminal leave. He also states that his arrest did not affect his active duty commitment. The record indicates that the applicant was discharged with an Under Other Than Honorable Discharge for being convicted of capital murder by civilian authorities. The DRB took note of the applicant's duty performance as documented by his performance reports, and other information contained in the records. They found the seriousness of the willful misconduct offset any positive aspects of the applicant's duty performance. The Board concluded the discharge was appropriate for the reasons that were the basis for this case.

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

(Former SGT) (HGH SGT)

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 13 May 02 UP AFI 36-3208, para 5.51 (Civilian Conviction). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 13 Sep 66. Enlmt Age: 19 4/12. Disch Age: 35 8/12. Educ: HS DIPL. AFQT: N/A. A-48, E-69, G-55, M-68. PAFSC: 3E051 - Electrical Systems Journeyman. DAS: 29 Jun 90.

b. Prior Sv: (1) AFRes 3 Feb 86 - 17 Feb 86 (15 days) (Inactive).

(2) Enlisted as AB 18 Feb 86 for 4 yrs. Extended 16 Nov 87 for 17 months. Svd: 3 yrs 1 month 8 days, all AMS. AMN-(APR Indicates): 18 Feb 86-17 Feb 87. A1C - 18 Jun 87. SrA - 18 Feb 89. Sgt - 18 Feb 89. APRs: 8,9,9.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as Sgt 27 Mar 89 for 6 yrs. Svd: 13 Yrs 1 Mo 16 Das, of which AMS is 5 Yrs 11 months 27 days (excludes 7 years 1 month 19 days lost time).

b. Grade Status: None.

c. Time Lost: 24 Mar 95 through 13 May 02 (7 yrs 1 month 19 days).

d. Art 15's: (1) None.

e. Additional: None.

f. CM: None.

g. Record of SV:	26 Jul 89 - 17 Feb 90	Kadena AB	3	(CRO)
	18 Feb 90 - 17 Feb 91	Sheppard AFB	3	(Annual)
	18 Feb 91 - 17 Feb 92	Sheppard AFB	4	(Annual)
	18 Feb 92 - 02 Oct 92	Sheppard AFB	2	(CRO)
	03 Oct 92 - 02 Oct 93	Sheppard AFB	4	(Annual)
	03 Oct 93 - 02 Oct 94	Sheppard AFB	3	(Annual)

(Discharged from Sheppard AFB)

h. Awards & Decs: AFAM, JMUA, AFOUA, AFGCM 2/1 DEV, NDSM, SWASM W/1 DEV, AFLSAR W/1 DEV, NCOPMER, AFTR.

i. Stmt of Sv: TMS: (9) Yrs (1) Mos (21) Das
TAMS: (9) Yrs (1) Mos (8) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 20 Aug 02.
(Change Discharge to Honorable)

Issue 1: On the date of my arrest, I was on my last day of terminal leave.

Issue 2: I was outprocess (sic) except for signing my DD-214.

Issue 3: At the time I was to discharge, I was to receive an Honorable discharge plus separation pay and two years benefits, MWR, Commissary, and BX.

Issue 4: My conviction didn't come for almost 20 month (sic) after I was suppose to discharge.

Issue 5: My arrest did not effect my active duty committment (sic) to the Air Force.

ATCH

None.

27Nov02/ia

FD2002-0356

DEPARTMENT OF THE AIR FORCE
AIR EDUCATION AND TRAINING COMMAND

31 OCT 2000

MEMORANDUM FOR [REDACTED] 82 CES

Texas Dept of Criminal Justice Clements Unit
9601 Spur 591
Amarillo TX 79107-9606

FROM: 82 CES/CC
231 9th Avenue
Sheppard AFB TX 76311-3333

SUBJECT: Notification Memorandum-Board Hearing

1. I am recommending your discharge from the United States Air Force for civilian conviction according to AFPD 36-32 and AFI 36-3208, under the provisions of paragraph 5.51. 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 were, on or about 24 Sep 96, tried and convicted in the Criminal District Court Number Three, Tarrant County, Texas, of Capital Murder.
3. This action could result in your separation with an under other than honorable conditions discharge. I am recommending that you receive an under other than honorable conditions discharge. The commander exercising special court-martial (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.
4. You have the right to:
 - a. Consult legal counsel.
 - b. Present your case to an administrative discharge board, subject to your availability.
 - c. Be represented by legal counsel at a board hearing.
 - d. Submit statement 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.

Gov Ltr 2 for 10

10/02/2002 15:00 9406767714

Military legal counsel Capt [redacted] or [redacted] has been obtained to assist you. You may contact your Area Defense Counsel via telephone at (940) 676-2186. 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.

6. Confer with your counsel and reply, in writing, within seven (7) workdays from receipt specifying the rights you choose to exercise. You will need to complete one of the following memoranda: Conditional waiver (atch 5), Unconditional Waiver (atch 6), or request for a board hearing (atch 7). 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.

7. 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 <http://afpubs.hq.af.mil>.

Handwritten initials

8. 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.

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



Attachments:

- 1. 46th Judicial District, District Attorney Dan Bird Memo, 28 Sep 00.
- 2. Capital Judgement and Sentence Cause No. 0003433-V, 26 Sep 96
- 3. AF Form 2098, 14 Apr 95.
- 4. Airman's Acknowledgment
- 5. Conditional Waiver
- 6. Unconditional Waiver
- 7. Request for Board Hearing
- 8. Return Envelope

Handwritten: Page 1 of 7