

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE SSGT	AFSN/SSAN ██████████
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL NAME OF COUNSEL AND OR ORGANIZATION ██████████		ADDRESS AND OR ORGANIZATION OF COUNSEL THE AMERICAN LEGION
YES	NO	
X		

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

ISSUES A01.02, A01.04	INDEX NUMBER A67.30, A67.50	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
HEARING DATE 17 APR 03	CASE NUMBER FD2002-0393	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 Washington, D.C.
 Advise applicant of the decision of the Board.
 + Change the Reason and Authority to Secretarial Authority.
 * Upgrade the RE Code to 3K.

SIGNATURE OF RECORDER	SIGNATURE OF BOARD PRESIDENT

INDORSEMENT	DATE: 17 APR 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

FD02-0393

GENERAL: The applicant appeals for upgrade of discharge to Honorable, to change the Reason and Authority for the discharge, and to change his reenlistment code.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, at Andrews AFB, MD on April 17, 2003.

The following additional exhibits were submitted at the hearing: Exhibit 5: Applicant's issues; Exhibit 6: seven character letters; Exhibit 7: AAFES Credit account letter; Exhibit 8: Letter from Counsel; Exhibit 9: Witness statement letter; Exhibit 10: eight training certificates; Exhibit 11: five certificates of appreciation; Exhibit 12: Statement from member.

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

FINDINGS: The discharge is upgraded to Honorable, and the Reason and Authority for discharge is changed to Secretarial Authority. The RE Code is changed to 3K.

ISSUE: The applicant contends his discharge was inequitable because it was too harsh. The records indicated the applicant received an Under Other Than Honorable Conditions (UOTHC) discharge for a Pattern of Misconduct – failure to meet financial obligations and for commission of a serious offense – sexual deviation. After a thorough and complete consideration of the information submitted by the applicant, the applicant's compelling personal testimony, and information contained in the record, the Board concluded there was sufficient mitigation and extenuation to substantiate an impropriety and to upgrade the discharge and change the reason for the discharge. The Board also changed the applicant's reenlistment code.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was not consistent with the procedural and substantive requirements of the discharge regulation and was not within the discretion of the discharge authority and that the applicant was not provided full administrative due process. There was an error in procedure associated with the discharge at the time of issuance; specifically, the member was informed about an Administrative discharge board and elected such. However, the member's commander did not follow through and discharged the member. The rights of the applicant were prejudiced thereby.

In view of the foregoing findings, the board further concludes that the overall quality of applicant's service is more accurately reflected by an Honorable discharge and the reason for the discharge is more accurately described as Secretarial Authority. The applicant's characterization and reason for discharge should be changed to Honorable and Secretarial Authority under the provisions of Title 10, USC 1553. The applicants RE Code should be changed to 3K.

Attachment:
Examiner's Brief

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

(Former SSGT) (HGH SSGT)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAFR 16 Dec 00 UP AFI 36-3209, Chapter 3, paragraphs 3.21.3.1; 3.21.2.4; 3.21.3.4 (Pattern of Misconduct - Failure to Meet Financial Obligations, Commission of a Serious Offense-Sexual Deviation). Appeals for Honorable Discharge, to Change the RE Code, and Change the Reason and Authority for Disch.

2. **BACKGROUND:**

a. DOB: 13 Oct 67. Enlmt Age: 23 10/12. Disch Age: 33 2/12. Educ: HS DIPL. AFQT: N/A. A-59, E-69, G-42, M-53. PAFSC: 45234 - Tactical Aircraft Maintenance. DAS: 12 Aug 94.

b. Prior Sv: Enlisted USAFR as A1C 4 Sep 91 for 6 yrs. Enlisted USAR as E-3 24 Nov 93 for 6 yrs. Svd: 2 yrs 11 months 7 days, of which AMS is 6 months 2 days. SrA to SSGT (Unknown). EPRs: None.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted USAFR as SSGT 12 Aug 94 for 6 yrs. Svd: 6 Yrs 4 Mo 1 Das, of which AMS is 9 months 11 days.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: None.

e. Additional: (Examiner's Note: Source of the following infractions was extracted from the Statement Of Reasons contained in the discharge package)

O/A 11 Feb 99 - Committed an indecent act upon a female child under 16 years of age.

Undated - Failure to pay just debts.

Undated - Abuse of ----- Bank government travel card by charging unauthorized purchases to the card and making unauthorized ATM withdrawals with the card, in violation of AFI 65-104.

f. CM: None.

g. Record of SV: 5 Sep 91 - 4 Sep 98 Homestead AFB 4 (Biennial)

(Discharged from Homestead AFB)

h. Awards & Decs: AFTR, NDSM, ARFMSM, AFLSAR.

i. Stmt of Sv: TMS: (9) Yrs (3) Mos (13) Das
TAMS: (1) Yrs (3) Mos (14) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 11 Sep 02.

(Change Discharge to Honorable, Change the RE Code, and Change the Reason and Authority for Discharge)

Issue 1: I was discharged, under Other Than Honorable Conditions from the Air Force Reserve because I was wrongly accused of a crime, and subsequently extradited to Trinidad for trial. While in the Federal Detention Center, Miami, awaiting extradition, I was visited by my Unit Commander and the Ass't Base Commander, Homestead AFB. At that time, I was given the option of having an Administrative Discharge Hearing, which I chose. Several months later, while awaiting trial in Trinidad, I received my administrative discharge, Under Other Than Honorable Conditions, without being granted a hearing, as well as prior to being tried for the alleged offense. I was eventually cleared of all charges and the ultimate verdict was NOT GUILTY.

Issue 2: Request a hearing in order to have my discharge upgraded in order to return to the Air Force Reserve and continue my exemplary career.

ATCH

1. Republic of Trinidad and Tobago Supreme Court Verdict.
2. Letter from Defense Attorney.
3. Memorandum Requesting Administrative Board Hearing.
4. Newspaper Articles.

18DEC02/ia



FD 2002-6393

DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND

23 June 2000

MEMORANDUM FOR 482 FW/CC

FROM: 482 FW/JA

SUBJECT: Legal Review; Administrative Discharge Action against [REDACTED]
[REDACTED]

1. The attached Commander's Report from [REDACTED], 70 APS/CC, Homestead ARS FL, dated 21 June 2000, recommending discharge action against [REDACTED]; 70 APS, Homestead ARS FL, has been reviewed IAW AFI 36-3209, and has been determined to be legally sufficient.
2. [REDACTED] is a 32 year old air transportation helper, first assigned to his present unit on 12 August 1994. Total active military service is reflected as eight months and twenty-two days. The date of the member's most current promotion to E-5 is 04 September 1991. [REDACTED] current date of enlistment is 12 August 1994, and he is currently serving a six-year term of enlistment. There is no record of time lost or convictions by courts-martial; however there is unit-generated derogatory information in the form of a memorandum for record documenting Government travel card abuse (unauthorized and delinquent charges) dated 23 June 2000. Favorable communications, citations and awards include: Air Force Training Ribbon; National Defense Service Medal; Air Reserve Forces Meritorious Service Medal; and the Air Force Longevity Service Award. His AFQT scores are as follows: M -53; A -59; G - 42; E - 69.
3. [REDACTED] commander has recommended him for discharge pursuant to AFI 36-3209, Table 3.1, Rule 42, paragraph 3.21.3 (Misconduct, Commission of Serious Offense) and Table 3.1, Rule 44, paragraph 3.21.3.1 (Sexual Deviation). Specifically, this discharge action is predicated upon the member having committed an indecent act, or assault upon a child under 16 years of age while on board an aircraft on the runway of Piarco International Airport, Trinidad and while employed in his civilian capacity as a flight attendant. Subsequent to the departure of the flight from Trinidad and its arrival at New York City, New York, [REDACTED] was interviewed by Special Agents of the Federal Bureau of Investigation and admitted committing the indecent assault upon the nine-year-old female victim, a citizen of Trinidad and Tobago.
4. Initially, a complaint was filed in the Eastern District of New York charging the member with Sexual Contact with a person under twelve, in violation of Title 49, United States Code, Section 46506. However, due to the status of the aircraft at the time of the indecent act/ assault (cockpit door open and the flight still on the tarmac at Piarco International Airport) it was later determined that jurisdiction over the member's acts could only be asserted by Trinidad and Tobago and could not be asserted by the United States. As a result of this determination the complaint in the Eastern District was dismissed.

Thereafter, on or about May 13, 1999, government authorities in Trinidad and Tobago returned criminal charges against the member charging him with a violation of their Penal Code, specifically the crime of Serious Indecency on a Minor, in violation of the Sexual Offences Act No. 27/1986, Trinidad and Tobago. On May 22, 2000, the member was located in North Miami Beach, Florida, arrested by officers of the United States Marshal's Service and held under federal warrant and complaint for purposes of extradition to Trinidad and Tobago to answer said charge. On June 20, 2000, the member was ordered by the Federal District Court for the Southern District of Florida to be extradited to Trinidad and Tobago for purposes of prosecution by the government of that country.

5. After having considered [REDACTED] entire military record, [REDACTED] has made the preliminary administrative determination that the member is subject to discharge IAW the governing Air Force Instruction. Thereafter, as required by the AFI, [REDACTED] has recommended that the member receive an Under Other Than Honorable Conditions (UOTHC) discharge.

6. Having carefully reviewed the entire file, the undersigned heartily concurs in the commander's recommendation to affect [REDACTED] discharge from the U.S. Air Force Reserve. The serious nature of the member's admitted criminal misconduct, involving an indecent assault in public on the person of a nine-year-old child, provides ample basis upon which to support this proposed action. Given the quality standards and core values upon which we are judged on a daily basis, clearly, [REDACTED] is anathema to those standards and values and has marked himself as an individual whose continued retention in uniform and recourse to the privileges and entitlements of membership in the U.S. Air Force Reserve should be terminated as soon as possible.

7. Recommendation: That the Commander, 482d Fighter Wing, favorably indorse [REDACTED] Commander's Report and Recommendation for Discharge, and that under cover of first indorsement, the entire discharge file be forwarded to HQ AFRC/DPAA for further action consistent with the governing AFI.

[REDACTED]

Atch
Discharge Package [REDACTED]

FD2002-0393

DEPARTMENT OF THE AIR FORCE
AIR FORCE RESERVE COMMAND



18 SEP 2000

MEMORANDUM FOR [REDACTED]

FROM: HQ AFRC/DPM
155 2d St
Robins AFB GA 31098-1635

SUBJECT: Notification of Initiation of Separation Action under AFI 36-3209

1. By this memorandum, separation action is being initiated against you for misconduct, commission of a serious offense, sexual deviation; misconduct, a pattern of misconduct, failure to meet financial obligations; and misconduct, commission of a serious offense, other serious offense. The authority for this separation action is AFI 36-3209, Chapter 3, paragraphs 3.21.3.1, 3.21.2.4 and 3.21.3.4. Information regarding your entitlement to submit statements about your case, the lawful usage of such statements and their disclosure is provided in the attached Privacy Act Statement (Atch 1). A description of the reasons for this separation action is set forth in the attached Statement of Reasons (Atch 2) along with supporting documents. AFI 36-3209 is available for your review at your servicing Military Personnel Flight. Supporting documents from the Office of Special Investigation (OSI) may be obtained by contacting [REDACTED], a Judge Advocate as indicated in paragraph 3a. The types of separation authorized are Honorable, General (Under Honorable Conditions) and Under Other Than Honorable Conditions. The type of separation recommended in your case is an Under Other Than Honorable Conditions Discharge.

2. Within 24 hours after you receive this memorandum, you must complete and return the attached acknowledgment of receipt (Atch 3) of this memorandum and the attachments thereto.

3. The following is a summary of your rights:

a. You are entitled to consult with military legal counsel who is qualified under Article 27(B)(1), Uniform Code of Military Justice (UCMJ), at no cost to you. You may also consult with civilian counsel of your choice, but at your own expense. [REDACTED] a judge advocate who is qualified under Article 27(B)(1), UCMJ, has been designated to represent you in connection with this separation action. His mailing address is 94 AW/JA, 1430 First St, Dobbins ARB GA 30069. His telephone numbers are toll free (888) 436-2246 ext 5027, commercial (770) 919-5027 or DSN 925-5027 and fax numbers are commercial (770) 919-5034 or DSN 925-5034.

b. You have the right to submit pertinent statements and/or documents in your behalf which you desire to be considered in the disposition of your case. If you elect to exercise your right to submit statements, and you return the attached form (Atch 4) within 15 days of receipt, you may submit statements or documents at any time during the administrative discharge process. Your decision on requesting or waiving the board hearing does not affect your right to submit statements or documents during the administrative discharge process. The form must be signed

either by you or your legal counsel and returned to HQ AFRC/DPM, 155 2nd St, Robins AFB GA 31098-1635.

c. If you need additional time to respond to this separation action, either you or your legal counsel may submit a written request to HQ AFRC/DPM, 155 2nd St, Robins AFB GA 31098-1635, for an extension of time, stating why you need the extra time and how much you'll need. The request must be submitted in sufficient time to reach this office within 15 days after receipt of this memorandum.

4. You are eligible for an administrative discharge board. Within 15 days after you receive this memorandum, you may request to have your case heard by an administrative discharge board at this headquarters by completing and returning the attached form (Atch 5) requesting a board hearing. If you desire a board hearing, you must mail the completed form in sufficient time to reach this headquarters within 15 days after your receipt of this memorandum. Otherwise, your right to have your case heard by an administrative discharge board will be considered waived. Within 15 days after you receive this memorandum, you may waive your right to have your case heard by an administrative discharge board by completing and returning the attached form (Atch 6), evidencing your waiver. Information regarding an administrative discharge board is provided at Attachment 7.

5. You are not eligible to apply for transfer to the Retired Reserve.

6. You should note that failure to respond on the selection of one of these options, or failure to request a delay within 15 days after you receive this memorandum, will constitute waiver of all your rights. This includes the right to have your case heard by an administrative discharge board, and will result in your case being processed on the basis of all the evidence then available.

7. Return envelopes are attached (Atch 8) for your convenience.



Attachments:

1. Privacy Act Statement
2. Statement of Reasons w/
Supporting Documentation
3. Acknowledgment of Receipt
4. Selection of Rights
5. Request for Board Hearing
6. Waiver of Board Hearing
7. Discharge Board Info
8. Envelopes (2)

cc:

HQ AFRC/JAS

482 MSS/DPMSA (Relocation) wo Attachments