

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE CAPT	AFSN/SSAN [REDACTED]
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TYPE	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES X	NO [REDACTED]	AMERICAN LEGION

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

ISSUES A94.06, A94.12	INDEX NUMBER A01.46	EXHIBITS SUBMITTED TO THE BOARD	
		1	ORDER APPOINTING THE BOARD
		2	APPLICATION FOR REVIEW OF DISCHARGE
		3	LETTER OF NOTIFICATION
HEARING DATE 23 APR 03	CASE NUMBER FD2002-0418	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.

 *Change the Reason and Authority to Secretarial Authority.

SIGNATURE OF RECORDER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 23 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

FD2002-0418

GENERAL: The applicant appeals for a change of the Reason for discharge.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, Mr. John Zangas of the American Legion, at Andrews AFB, MD on April 23, 2003.

The following additional exhibits were submitted at the hearing:

Exhibit 5: Applicant's contentions

Exhibit 6: AF Form 7248, Performance Feedback, undated

Exhibit 7: Memorandum from [REDACTED], answer to 377 SVS question, 10 Jul 01

Exhibit 8: Memo from [REDACTED], record of verbal counseling, 13 Jul 01

Exhibit 9: Memo for 377 SVS/CC, Abandoned Vehicles in Auto Hobby Shop Storage Lot, 17 Jul 01

Exhibit 10: Memo from 377 MDOS/SGOHF, Family Maltreatment Case Management Team Minutes, 13 Jul 01

Exhibit 11: AF Form 1587, Military Equal Opportunity Complaint Summary, 27 Jul 01

Exhibit 12: Memo for 377 ABW/ME, explanation of allegations, MEO complaint, 30 Jul 01

Exhibit 13: 377 ABW/JA Suspense Reports (3), 8 Aug 01, 15 Aug 01, 27 Nov 01

Exhibit 14: Memo from 377 ABW/JA, Letter of Counseling, 9 Aug 01; applicant's reply, 10 Aug 01

Exhibit 15: Summary of Interview, 14 Aug 01; Supplement to Interview, 19 Aug 01

Exhibit 16: Memo from 377 ABW/JA, Response to applicant's Response to LOC dated 9 Aug 01 (exhibit 14), 27 Aug 01; applicant's reply, 17 Sep 01

Exhibit 17: Memo from [REDACTED] Incidents, 12 Oct 01

Exhibit 18: Memo from 377 ABW/JA, Letter of Admonishment, 16 Oct 01

Exhibit 19: Letter from 377 ABW/IG, response to applicant's 19 Sep 01 complaint to IG, 16 Oct 01

Exhibit 20: Memo from 377 ABW/CC, Notification of Commanding Officer Referral for Mental Health Evaluation, 18 Oct 01

Exhibit 21: Applicant's reply to 16 Oct 01 LOA (exhibit 18)

Exhibit 22: Memo from 377 ABW/JA, Referral Officer Performance Report, 22 Jan 02; with AF Form 707B, Company Grade Officer Performance Report, 2 Jan 02

Exhibit 23: Applicant's reply to 22 Jan 02 memo and 2 Jan 02 OPR (exhibit 22)

Exhibit 24: Memo from 377 ABW/JA, Letter of Admonishment, 1 Feb 02; applicant's reply, 5 Feb 02

Exhibit 25: Memo from 377 ABW/CC, Notification of Show Cause Action, 15 Feb 02; with applicant's Response to Notification of Show Cause Action, 4 Mar 02

Exhibit 26: Four pages from applicant's daily planner, 20 Aug 01 – 2 Sep 01

Exhibit 27: Applicant's resume

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

FINDINGS: Change of Reason for discharge is granted. The DRB finds that the evidence substantiates an inequity justifying a change of Reason for the discharge.

ISSUES: The applicant was discharged with an honorable service characterization from the Air Force for unsatisfactory performance. She had two letters of admonishment for failure to go and late for work, one letter of counseling for failure to go, and one referral Officer Performance Report for unsatisfactory performance. The applicant complained that she was a victim of racial discrimination and harassment from her commander, and that she experienced retaliation after she exercised her right to make Military Equal

Opportunity and Inspector General complaints against her commander. She claimed that the discharge action was too harsh, that her chain of command conspired to illegally eliminate her from the service, and that the Air Force Personnel Board cooperated in that scheme.

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.

The DRB found no evidence to substantiate racial discrimination by the applicant's commander or any member of the Air Force. The applicant provided no evidence of discrimination except that she considered bias the only possible reason for her commander's perceived hostility. While there may have been a personality conflict between the applicant and her commander, there was evidence to show this resulted from the commander's dissatisfaction with the applicant's job performance and attitude. Nor could the DRB find any evidence to corroborate the applicant's claim of a conspiracy among the chain of command or that the Personnel Board cooperated in any such conspiracy.

The DRB also noted that the applicant did not request a resignation in lieu of further administrative action, an option available to her as mentioned in her wing commander's 15 Feb 02 memorandum, Notification of Show Cause Action. In addition, the DRB opined the Personnel Board acted appropriately in disapproving the applicant's earlier request for voluntary separation in that there was insufficient justification for approval under the Miscellaneous Separation criteria.

The DRB did find, however, that the evidence suggests at least the perception of reprisal against the applicant for making Military Equal Opportunity and Inspector General complaints. While the complaints themselves were determined to not warrant an investigation, the timing of subsequent administrative actions and the timing of a referral for a mental health evaluation were suspect and could not be ignored. Furthermore, the DRB opined the level of administrative actions taken was beyond the severity of the minor infractions, and thus not appropriate as among the bases for discharge; hence, the discharge was too harsh.

In view of the foregoing findings the board concludes that the applicant's Reason for discharge is more accurately reflected as Secretarial Authority.

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 HON Disch fr USAF 13 May 02 UP AFI 36-3206, Chapter 2 (Unsatisfactory Performance). Appeals to Change Reason and Authority for Discharge.

2. BACKGROUND:

a. DOB: 20 Jan 65. Enlmt Age: 33 11/12. Disch Age: 37 3/12. Educ: Law Degree. AFQT: N/A. AFOQT: Unknown. PAFSC: 51J3 - Judge Advocate. DAS: 18 Mar 01.

b. Prior Sv: (1) AFRes 28 Dec 98 - 2 Jan 99 (5 Days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Appt as 1Lt, ResAF and ordered to EAD 3 Jan 99. Svd: 3 Yrs 4 Mos 11 Das, all AMS.

b. Grade Status: Captain - 3 Jul 99

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOA, 01 FEB 02 - Late for work.
LOA, 16 OCT 01 - Failure to obtain flu shot and attend CFC meeting.
LOC, 09 AUG 01 - Failure to attend required meeting.

f. CM: None.

g. Record of SV: 3 Jan 99 - 2 Jan 00 Kelly AFB YF (Annual)
3 Jan 00 - 2 Jan 01 Kelly AFB YE (Annual)
3 Jan 01 - 2 Jan 02 Kirtland AFB NE (Annual) REF

(Discharged from Kirtland AFB)

h. Awards & Decs: AFCM, AFTR.

i. Stmt of Sv: TMS: (3) Yrs (4) Mos (16) Das
TAMS: (3) Yrs (4) Mos (11) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 4 Oct 02.
(Change Reason and Authority for Discharge)

FD2002-0418

ISSUES ATTACHED TO BRIEF

ATCH

1. Applicant's Issues.
2. DD Form 214.
3. Discharge Documents.

14 Jan 03/cr

Issue: Whether my discharge is unjust and unlawful because it was initiated by my former supervisor, [REDACTED], in retaliation for (1) making a formal complaint against her for unlawful discrimination and (2) making a formal complaint against her for taking reprisals.

Facts:

a. On 27 July 2001, I filed a formal complaint of racial discrimination against [REDACTED], who was at the time my supervisor and Staff Judge Advocate at Kirtland AFB, 377 ABW/JA. Following my complaint, [REDACTED] immediately retaliated against me by assigning excessive work, conspiring with another commander to publicly embarrass me about an overdue suspense and dealing severely with any minor, unintentional oversight. She or her immediate subordinate began issuing Letters of Counseling and Admonishment and taking administrative disciplinary action for such trivial reasons as missing one meeting or failing to take a flu shot on a particular date.

b. After I filed a complaint of racial discrimination with Military Equal Opportunity (MEO) office, [REDACTED] further attempted to initiate a commander directed physical because of an alleged concern with my fitness for duty. My primary care physician, [REDACTED], explained the following circumstances to me during my appointment on 6 August 2001. According to [REDACTED], my supervisor had called my Commander, [REDACTED] 377 ABW/CC, the previous week in an attempt to initiate a commander directed physical but that she [REDACTED] did not agree that this action was warranted. She did agree, however, to see me to evaluate my fitness for duty. After examining me, [REDACTED] concluded that I was fit for duty and that calling a Medical Evaluation Board (MEB) was not warranted.

c. On 19 Sept 2001, I contacted the Kirtland AFB Inspector General's office to report my concerns about [REDACTED] retaliation against me. On or about 17 October, the IG's office declined to investigate the allegations. On the very next day after my exit interview with the IG's office, on 18 October, I was presented with an order to report for a Mental Health Evaluation (MHE). I have included a copy of this order. The reasons given for this adverse action are either flimsy or fabricated, subjective, and completely unsubstantiated. It is clear from the timing of this adverse action that it was in retaliation for my communicating with the IGs office about prior reprisals [REDACTED] had taken. It was, thus, an unlawful order in violation of federal statute and DoD regulations which prohibit retaliation against military members for communicating with an IG about violations of law or regulation and specifically prohibit retaliatory MHEs.

d. On 30 October 2001, I submitted my application to separate from the Air Force rather than face further retaliation and harassment. On 2 February 2002, the Secretary of the Air Force denied my request to separate for miscellaneous reasons. On the same day that I was notified of this denial, I was informed by [REDACTED] that she had initiated involuntary discharge action against me and that I would be notified of it on that Friday. Also present during this meeting was [REDACTED] USAFR. After my voluntary request to separate had been denied, [REDACTED] had promptly contacted a member of the Air Force Personnel Board on [REDACTED] behalf, to arrange an agreement to grant an involuntary discharge against me. [REDACTED] and [REDACTED] gave me the understanding that the Air Force Personnel Board had

agreed to grant an involuntary discharge action. On or about 3 May 2002, despite the flimsy basis for this discharge action and the highly questionable motives of those taking it, the Air Force granted the involuntary discharge, allegedly for unsatisfactory performance.

Conclusion:

a. It is clear beyond any reasonable doubt from the timing and pattern of her actions that [REDACTED] retaliated against me for making protected communications to the MEO office and to the IG's office, in violation of lawful regulations. She actively sought to obtain my dismissal by any means available to her and has, indeed, succeeded in her illegal objective. She immediately began constructing a flimsy case against me by taking unwarranted administrative disciplinary actions and she continued making unfounded accusations attacking my professional competence. She attempted to instigate a commander directed physical and successfully instigated an illegal MHE. All of these adverse actions were motivated by the common purpose of providing a basis for seeking an administrative discharge, on either performance-related or medical grounds. In the end, she chose the path most likely to produce the desired result.

b. It is my belief that the Air Force Personnel Board, to its discredit, failed to consider the individual circumstances of my case but thoughtlessly granted this discharge, as previously arranged through [REDACTED]. In so doing, they have participated in [REDACTED] illegal scheme of retaliation against me. In the final analysis, the reason that I was involuntarily discharged from the Air Force is because I dared to complain about the discrimination, harassment and retaliation I suffered at the hands of a biased and absolutely unethical person who never hesitated to abuse the position of authority that she had been given by the Air Force.

c. The reasons advanced for my dismissal are mere pretexts and granting this discharge was not only grossly unfair but also unlawful. It constitutes retaliation against a military member for making communications to appropriate officials regarding violations of DoD and Air Force regulations. I respectfully request the Board to remove this undeserved stain on my record. I request that my DD Form 214 be corrected so that it reflects a voluntary separation for miscellaneous reasons rather than an involuntary discharge for unsatisfactory performance.

Item 7. Supporting Documents

d. Document 4: AF Form 780, Officer Separation Actions, dtd 30 Oct 2001

e. Document 5: Notification of Commanding Officer Referral for Mental Health Evaluation, dtd 18 Oct 2001



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 377TH AIR BASE WING (AFMC)

FD2002-0418

15 February 2002

MEMORANDUM FOR [REDACTED]

FROM: 377 ABW/CC

SUBJECT: Notification of Show Cause Action Initiated Under AFI 36-3206, Chapter 2, paragraphs 2.3.1, 2.3.3, 2.3.4 and 2.3.6

I am initiating action against you under AFI 36-3206, chapter 2, paragraphs 2.3.1, 2.3.3, 2.3.4 and 2.3.6 that requires you to show cause for retention on active duty.

I am taking this action because of:

(a) You failed to attend required meetings, including the Family Maltreatment Case Management Team meeting on 8 Aug 01, for which you were given a Letter of Counseling, dated 9 Aug 01. (Atch 1)

(b) You failed to obtain a flu shot and failure to go to the weekly Combined Federal Campaign core team meeting, for which you were given a Letter of Admonishment, dated 16 Oct 01. (Atch 2)

(c) On 1 Feb 02 you reported to work 15 minutes late for which you were given a Letter of Admonishment, dated 1 Feb 02. (Atch 3) and

(d) You have shown a distinctive apathy and defective attitude towards your duties and efforts to counsel you as evidenced by your referral OPR which closed out on 2 Jan 2002. (Atch 4)

The least favorable character of discharge that the Secretary of the Air Force may approve in this case is under honorable conditions (general). Attached are copies of documentary evidence to support this action.

Sign and date the attached indorsement acknowledging receipt of this notification memorandum. A copy of this notification memorandum will be provided to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will show on it the date and time that you declined to acknowledge receiving it and it will be included as a part of your case file.

Familiarize yourself with AFI 36-3206, particularly the rights that you have. If you do not apply for retirement or request a resignation in lieu of further administrative action, an AFPB will convene as provided in chapter 6 of AFI 36-3206. You may contact the Area Defense Counsel, [REDACTED], at DSN 896-6701, to discuss the procedures involved and your rights

and options. If you decline counsel, you may contact the Acting Chief, Military Personnel Flight, [redacted], located at 1451 Fourth Street, SE, phone: 846-5628, for counseling about your rights and options.

Within 10 calendar days after you receive this notification memorandum, you must respond by indorsement to me. If I do not receive the indorsement within the allotted time I will proceed with further action under AFI 36-3206. Include in your indorsement the following:

a. Any statement you wish to submit on your own behalf and/or any additional evidence that you wish me to consider. If you are unable to submit your statements or documentary evidence within 10 calendar days after receiving this notification memorandum, you may request more time as allowed under AFI 36-3206. Submit your request for additional time directly to me. If you do not submit statements or evidence, your failure will constitute a waiver of your right to do so and I will refer your case to the AFPB.

b. A statement that [redacted] counseled you and that you fully understand your rights and options in this action. If you decline counsel, so state and indicate (MPF chief, name and grade) counseled you and that you fully understand your rights and options in this action.

c. A statement that you understand the following regarding recoupment of education assistance, special pay, or bonuses received if you haven't completed the period of active duty you agreed to serve:

Recoupment of a portion of education assistance, special pay, or bonus monies received if you voluntarily separate.

Recoupment of a portion of education assistance received if involuntary discharge is for misconduct.

The recoupment in all cases is an amount that bears the same ratio to the total amount or cost provided to you as the unserved portion of active duty bears to the total period of active duty that you agreed to serve.

d. A statement notifying me whether you intend to apply for retirement or tender your resignation. If you have applied for retirement or tendered your resignation, attach a copy of the retirement application or the resignation.

e. A statement that the area defense counsel or the chief, Military Personnel Flight, explained separation pay to you and that you understand the eligibility criteria to receive separation pay.

f. Any other pertinent information.

In response to this notification memorandum, you may, within 10 days, tender your resignation under AFI 36-3207, chapter 2, section B, with the understanding that, if the Secretary of the Air Force accepts your resignation, you may receive a discharge under honorable conditions (general)

unless the Secretary of the Air Force determines that you should receive an honorable discharge. If the Secretary of the Air Force accepts your resignation, your discharge date will be as soon as possible but no later than 10 calendar days after the date that the MPF receives separation instructions.

I have not taken action required under AFI 31-501. You may request excess leave if the Air Force doesn't require your further participation in processing your case.

 USAF
Commander

Attachments:

1. LOC, dated 9 Aug 01, plus responses
2. LOA, dated 16 Oct 01, plus responses
3. LOA, dated 1 Feb 02, plus response
4. Referral OPR, dated 13 Feb 02, plus response
5. AFI 36-3206
6. AFI 36-3207
7. Other Pertinent Documents -- 2 MFR on Verbal counselings

1st Ind (Respondent)

MEMORANDUM FOR 377 ABW/JA

I acknowledge receiving your Notification of Show Cause Action, dated 15 Feb 02 with _____ attachments at 14:05 hours on 15 February 2002.

 USAF
377 ABW/JA