

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████		GRADE CAPT	AFSN/SSAN ██████████
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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	No	
	<input checked="" type="checkbox"/> None	

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
[Empty Box]					X
					X
					X
					X
					X

ISSUES A01.13, A92.01 A92.35 A92.21	INDEX NUMBER A67.30	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		
HEARING DATE 04 Sep 2003	CASE NUMBER FD-2003-00086		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
			TAPE RECORDING OF PERSONAL APPEARANCE		

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE.

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

[Handwritten Signature]

INDORSEMENT		DATE: 9/5/2003
TO: SAF/MRBR 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, 3RD FLOOR ANDREWS AFB, MD 20762-7002	

Issue 2. Applicant contends discharge was inequitable because it was too harsh. The records indicated the applicant received an Article 15, a Letter of Reprimand, verbal counseling and an Unfavorable Information File for his misconduct. The DRB opined that through these administrative actions, the applicant had an opportunity to change his negative behavior, but persisted in violating the standards expected of him. Therefore, the characterization of the discharge received by the applicant was found to be appropriate.

Issue 3. Applicant contends the discharge is improper because the Article 15 that formed a basis for discharge was in some way improper. This contention was fully addressed at the time of the Article 15 and some of the wording changed as a result. The Board finds this issue without further merit.

Issue 4 regards applicant's assertion he was not in violation of a disassociation order and that he believed it was no longer in effect, and by inference he should not have been punished nor discharged for that incident. However, there is no convincing evidence he did not know right from wrong. In fact, the documents are clear on the nature and duration of the order. Therefore, the Board finds this issue without merit.

Issue 5 applies to the applicant's post-service activities and infers that he should not be penalized indefinitely for a mistake he made while in service. The DRB was pleased to see that the applicant was doing well and has a good job. However, no inequity or impropriety in his discharge was suggested or found in the course of the hearing or records review.

As a related matter, applicant cited "previous board decisions," aspects of which he feels are similar to his own case, and wherein applicants in those cases received some relief from the DRB. Applicant states that the DRB found that merits of a former service member's record could be used as justification to upgrade a discharge to fully honorable status. Without additional specific information from the cases he believes are similar, the Board cannot determine the validity of or respond to applicant's interpretation of these cases. Additionally, it should be noted that the DRB is not bound by its discretionary decisions in prior cases.

The applicant cited his 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 his reentry code, this is not a matter of equity or propriety that warrants an upgrade.

The Board found the characterization of service, and reason and authority for the discharge received by the applicant were appropriate. The Board found no evidence of impropriety or inequity in this case on which to base an upgrade of discharge or to change his reentry code.

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]
[REDACTED]
(Former CAPT) (HGH CAPT)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 26 Feb 99 UP AFI 3207, Chapter 2, Section B (Resigning Instead of Undergoing Further Administrative Discharge Proceedings). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 29 Oct 67. Enlmt Age: 20 4/12. Disch Age: 31 3/12. Educ: BACHELOR DEGREE. AFQT: N/A. A-N/A, E-N/A, G-N/A, M-N/A. PAFSC: 03313 - Systems Flight/Communications Officer. DAS: 1 Jul 97.

b. Prior Sv: (1) AFRes 1 Mar 88 - 13 Dec 88 (9 months 12 days) (Inactive).
(2) Enlisted as A1C 14 Dec 88 for 4 yrs. Svd: 2 yrs 0 months 4 days, all AMS.
(3) Enlisted USAFR 19 Dec 90. Svd: 2 yrs 5 months 18 days (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Appointed as 2Lt and ordered to EAD 7 Jun 93. Svd: 5 Yrs 8 Mo 20 Das, all AMS.

b. Grade Status: Capt - 12 Mar 97
1Lt - 12 Mar 95.

c. Time Lost: None.

d. Art 15's: (1) 17 Aug 98, Dyess AFB, TX - Article 92. You, having knowledge of a lawful written order issued by LtCol [REDACTED] to wit: you are hereby ordered not to advance to less than 25 feet from A1C [REDACTED], dated 2 Apr 98, an order which it was your duty to obey, did, at or near Abilene, Texas, from on or about 24 Jul 98, to on or about 30 Jul 98, fail to obey the same by making contact with A1C [REDACTED]. Forfeiture of \$1,250.00 pay per month for two months (forfeiture of \$1,000.00 pay per month for two months suspended). Reprimand. (Appeal/Denied) (No mitigation)

e. Additional: LOR, 24 JUL 98 - Engaged in an unprofessional relationship with a female enlisted member.

f. CM: None.

g. Record of SV: 07 Jun 93 - 02 Mar 94 March AFB YE (Annual)
03 Mar 94 - 03 Dec 94 March AFB YE (Annual)
19 Feb 97 - 18 Feb 98 Dyess AFB YE (Annual)

(Discharged from Dyess AFB)

h. Awards & Decs: AFAM, AFCM, AFLSAR, AFTR W/1 DEV, SWASM W/1 DEV, NDSM, HSM, SAEMR W/1 DEV, KLM, AFOUA.

i. Stmt of Sv: TMS: (10) Yrs (11) Mos (25) Das
TAMS: (07) Yrs (08) Mos (24) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 20 Mar 03.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues with attachments.

24APR03/ia

7. SUPPORTING DOCUMENTS (X as applicable) (Please print name and Social Security Number on each document.)

WILL NOT BE SUBMITTED. PLEASE COMPLETE REVIEW BASED ON AVAILABLE SERVICE RECORDS.

ARE LISTED BELOW AND ARE ATTACHED TO THIS APPLICATION: (Continue on a plain sheet of paper if more space is needed.)

a. DOCUMENT 1:
Conditional Resignation Request dated: 20 Oct 98

b. DOCUMENT 2:
Character Statement [REDACTED]

c. DOCUMENT 3:
Character Statement [REDACTED]

8. ISSUES

The Board will consider any issue submitted by you prior to closing the case for deliberation. The Board will also review the case to determine whether there are any issues that provide a basis for upgrading your discharge. However, the Board is not required to respond in writing to issues of concern to you unless those issues are listed or incorporated by specific reference below. Carefully read the instructions that pertain to Block 8 prior to completing this part of the application. If you need more space, submit additional issues on an attachment.

Issue 1: My discharge was inequitable because it was based on one incident in over 10 years of exemplary service to my country.

Issue 2: My discharge was inequitable because it was too harsh. A general discharge has precluded me from continuing to serve my country in the National Guard. Currently the Pennsylvania Air National Guard Commando Solo - Special Operations Unit has completed all the necessary paperwork, background checks, and personal interviews for me to join their unit. However, the characterization of my discharge precludes me from doing so. My expertise and abilities could immediately benefit the unit and our country.

Issue 3: In the record of non judicial punishment, issue 6.c., where the commander finds I committed one or more of the alleged offenses. The dialog states, "You made this request despite the fact your wife believed you were having an affair with a female enlisted member of your squadron, and despite the fact you had asked for a divorce which may have precipitated your wives hospitalization for attempted suicide." However, there is no basis for establishing that fact. My ex-wife never made a statement to anyone in my command, to any agent or officer to that effect either before her attempted suicide or after. Furthermore, my ex-wife was a friend to

I HAVE LISTED ADDITIONAL ISSUES AS AN ATTACHMENT TO THIS APPLICATION.

I PREVIOUSLY SUBMITTED AN APPLICATION ON (Enter date) AND AM COMPLETING THIS FORM IN ORDER TO SUBMIT ADDITIONAL ISSUES.

THE ABOVE ISSUES SUPERSEDE ALL PREVIOUSLY SUBMITTED.

9. CERTIFICATION

I make the foregoing statements as part of my application with full knowledge of the penalties involved for willfully making a false statement. (U.S. Code, Title 18, Section 1001, provides that an individual shall be fined under this title or imprisoned not more than 5 years, or both.)

a. DATE (YYYYMMDD)

20030220

b. SIGNATURE

[REDACTED SIGNATURE]

UPON COMPLETION, MAIL TO APPLICABLE ADDRESS BELOW

ARMY	NAVY & MARINE CORPS	AIR FORCE	COAST GUARD
Army Review Boards Agency Support Division, St. Louis ATTN: SFMR-RBR-SL 9700 Page Avenue St. Louis, MO 63132-5200 (See http://arba.army.pentagon.mil)	Naval Council of Personnel Boards 720 Kennon Street, S.E. Rm. 309 (NDRB) Washington Navy Yard, DC 20374-5023	SAF/MIBR 550-C Street West, Suite 40 Randolph AFB, TX 78150-4742	Commandant (G-WPM) 2100 Second Street, S.W. Washington, DC 20593-0001

8. Additional Issues:

- Issue 3 cont:** the enlisted member who accompanied me to San Angelo to visit her. The commander's investigation never went so far as to take this fact into account.
- Issue 4:** I did not believe at the time I was said to be violating the order to disassociate that I was actually violating the order. It was my understanding at that time that all action against me had been terminated, thus the order was no longer in effect. The characterization of the actions taken by me such as, violating the order on numerous occasions and delivering personal items, including undergarments, in the record of nonjudicial punishment, overstates the violation as an outright disregard on my behalf toward good order and discipline. That overstatement is in direct conflict with any action I had taken prior to or since the event has occurred, and is an inaccurate reflection of my personal characteristics and moral fiber.
- Issue 5:** I believe that an upgrade is warranted based on previous board decisions where the record of performance prior to the offense and excellent post-service conduct, service to community, and achievement has been displayed. This excellent post-service conduct, service to community, and achievement should not be limited in any way by a single event in an otherwise exemplary career.

FD 8003-220 86



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS, 7TH BOMB WING (ACC)
DYESS AIR FORCE BASE, TEXAS

60598

MEMORANDUM FOR: Captain [REDACTED]

FROM: 7BW/CC

SUBJECT: Notification of Action Initiated under AFI 36-3206, Chapter 3, paragraph 3.6.4

1. I am initiating action against you under AFI 36-3206, Chapter 3, paragraph 3.6.4
2. I am taking this action because you have committed serious and recurring misconduct punishable by military or civilian authorities. Specifically:
 - a. You did, on or about 7 March 1998, engage in a non-professional relationship with AIC [REDACTED] a female enlisted member assigned to your squadron. Specifically, on 7 March 1998, you called AIC [REDACTED] at her residence, asked her to accompany you on a personal trip to Goodfellow Air Force Base, Texas, and she accompanied you in your privately owned vehicle to Goodfellow Air Force Base, Texas.
 - b. You did, between on or about 24 July 1998 and on or about 30 July 1998, fail to obey a lawful written order given to your squadron commander. Specifically, on or about 2 April 1998, you received an order prohibiting you from having any personal contact with AIC [REDACTED]. Between on or about 24 July 1998 and on or about 30 July 1998, you violated this order by visiting or attempting to visit AIC [REDACTED] at the Taylor County Adult Detention Center where she was in confinement.

The least favorable character of discharge that the Secretary of the Air Force may approve in this case is Under Other Than Honorable Conditions. Attached are copies of documentary evidence to support this action.

3. Sign and date the attached memorandum of acknowledgment immediately upon receiving this notification memorandum. Give one copy of the acknowledgment memorandum to the officer presenting this notification memorandum to you. If you decline to acknowledge receiving this notification memorandum, the officer presenting it to you will show you the notification memorandum that you declined to acknowledge receiving it. The notification and acknowledgment memorandum will be a part of your case file.
4. Familiarize yourself with AFI 36-3206 regarding the rights that you have and the actions that the MAJCOM may take on receipt of your reply to the action initiated. Contact Captain [REDACTED] 397 Third Street, Dyess AFB, TX 79607-2040, Commercial (915) 696-4233 or DSN 461-4233, to discuss the procedures involved and your rights and options. For discipline counsel, contact Major [REDACTED] Chief, Military Personnel Flight, 417 3rd Street, Dyess AFB, TX 79607, Commercial (915) 696-3003 or DSN 461-3003, for counseling about your rights and options. If you do not take action or respond as specified in the following paragraphs, the MAJCOM will proceed with further action under AFI 36-3206.

WG/CDR NOTIF Mem

Global Power for America

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5. Within 10 calendar days after you receive this notification memorandum, indorse it directly to HQ ACC/JAM, 114 Douglas Street, Suite 1140 Langley AFB VA 23665-2774, Fax ODSN 574-7650. HQ ACC will proceed with further action under AFI 36-3206 if it does not receive the indorsement within the allotted time. Include in your indorsement:

a. A statement of whether you want to comment or submit documentary evidence that you want considered in evaluating your case. Attach your statements or documentary evidence. 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. If you have requested more time to respond to the action initiated, attach a copy of your request.

b. A statement that Captain [redacted] counseled you and that you fully understand your rights and options in this action. If you declined counsel, so state and indicate that Major Robnett 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 have not completed the period of active duty you agreed to serve:

(1) Recoupment of a portion of education assistance, special pay, or bonuses received if you voluntarily separate.

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

(3) Recoupment of a portion of special pay or bonuses received regardless of the basis for involuntary discharge.

(4) 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 the duty bears to the total period of active duty that you agreed to serve.

(5) If you dispute that you are indebted for educational assistance, the board of inquiry, or, if you do not choose or are not entitled to a board of inquiry, the authority appointed by HQ ACC, will make findings and recommendations concerning the validity of your indebtedness. See AFI 36-3206, paragraph 4.37, regarding special rules for recoupment.

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.

6. In response to this notification memorandum, you may, within 10 calendar 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 will receive an under honorable conditions (general) discharge, 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 MPE receives separation instructions.

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7. Action under AFI 31-501 is not required.

8. You may request excess leave if the Air Force does not require your further participation in processing your case.



Brigadier General, USAF
Commander

Attachments

1. 9 BS/CC Memo, dated 30 Sep 98
2. AF Form 3070, dated 5 Aug 98
3. Order to Disassociate, dated 2 Aug 98
4. ROI, 11998080001C
5. LOR, dated 24 Jul 98
6. AF Form 1058, dated 29 Jul 98
7. ROI, 11998030072C, dated 2 Aug 98
8. AFI 36-3206
9. AFI 36-3207
10. Letter of Acknowledgment (2 copies)