

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]	GRADE SRA	AFSN/SSAN [REDACTED]
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TYPE	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 A94.05	INDEX NUMBER A59.00	EXHIBITS SUBMITTED TO THE BOARD		
		1	ORDER APPOINTING THE BOARD	
		2	APPLICATION FOR REVIEW OF DISCHARGE	
		3	LETTER OF NOTIFICATION	
HEARING DATE 24 JUN 03	CASE NUMBER FD2003-0125	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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.

SIGNATURE OF RECORDER [REDACTED]	SIGNATURE OF BOARD PRESIDENT [REDACTED]
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INDORSEMENT	DATE: 24 JUN 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

FD03-0125

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 states his discharge was inequitable because it was based on one isolated incident in 88 months of service. The record indicates the applicant received an Article 15 for homosexual conduct via unwanted sexual advances against another military member. The Board concluded the applicant's misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate. The Board found no evidence of any inequity or impropriety on which to base a decision to upgrade the discharge.

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 SRA) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 28 Apr 98 UP AFI 36-3208, para 5.36 (Homosexual Conduct). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 8 Nov 69. Enlmt Age: 20 5/12. Disch Age: 28 5/12. Educ: HS DIPL. AFQT: N/A. A-48, E-44, G-46, M-66. PAFSC: T2T251 - Air Transportation Journeyman. DAS: 9 Feb 97.

b. Prior Sv: (1) AFRes 11 Apr 90 - 22 May 90 (1 Month 12 Days) (Inactive).

(2) Enld as AB 23 May 90 for 4 yrs. Svd: 3 Yrs 0 Mos 1 Das, all AMS. AMN - Unknown. A1C - 23 Sep 91. SrA - 23 May 93. EPRs: 4,5.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SRA 24 May 93 for 6 yrs. Svd: 4 Yrs 11 Mos 5 Das, all AMS.

b. Grade Status: None.

c. Time Lost: None.

d. Art 15's: (1) 5 Nov 97, Osan AB, Korea - Article 134. You did, on or about 4 Jul 97, wrongfully commit an indecent act upon SRA [REDACTED] by entering his room and rubbing his penis with your hand. Suspended reduction to A1C, suspended forfeiture of \$250.00 pay per month for 2 months, restriction for 30 days, and 15 days extra duty. (Appeal/Denied) (No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 22 Aug 92 - 21 Aug 93 Pope AFB 5 (Annual)
22 Aug 93 - 28 Feb 94 Pope AFB 5 (CRO)
01 Mar 94 - 28 Feb 95 Pope AFB 5 (Annual)
01 Mar 95 - 28 Feb 96 Pope AFB 5 (Annual)
29 Feb 96 - 29 Dec 96 Pope AFB 5 (Annual)

(Discharged from Pope AFB)

h. Awards & Decs: AFAM, AFCM, AFLSA, AFTR, AFOLTR, NDSM, SAEMR, NCOPMER, AFOUA, AFGCM W/1 DEV, AFOSTR.

i. Stmt of Sv: TMS: (8) Yrs (0) Mos (18) Das
TAMS: (7) Yrs (11) Mos (6) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 17 Mar 03.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF

ATCH

1. Applicant's Issues.

16 May 03/cr

DEPARTMENT OF THE AIR FORCE
631ST AIR MOBILITY SUPPORT SQUADRON (AMC)
UNIT #2073
APO AREA PACIFIC 96278-2073

19 DEC 1997

MEMORANDUM FOR SrA [REDACTED]

FROM: CC

SUBJECT: Notification Letter -- Board Hearing

1. I am recommending your discharge from the United States Air Force for Homosexual Conduct according to AFPD 36-32 and AFI 36-3208, under the provisions of paragraph 5.36. 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 did, at or near Osan AB, ROK, on or about 4 Jul 97, wrongfully commit an indecent act (homosexual act) upon SrA [REDACTED] by entering his room and rubbing his penis with your hand. For this offense, you received an Article 15, with punishment consisting of a suspended reduction to airman first class, a forfeiture of \$250 pay per month for 2 months, restriction to Osan AB, ROK for 30 days, and 15 days extra duty. This action established an Unfavorable Information File (UIF). (Atch 1.1, 1.2, and 1.3)

3. This action could result in your separation with an Under Other Than Honorable Conditions Discharge. However, I am recommending that you receive an Under Honorable Conditions (General) 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. Additionally, any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have the right to:

a. Consult legal counsel.

b. Present your case to an administrative discharge board. You are entitled to 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 on 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.
5. You have been scheduled for a medical examination. You must report to the hospital, at _____ hours on _____.
6. You have the right to consult counsel. Military legal counsel has been obtained to assist you. For an appointment to consult the Area Defense Counsel, please contact Capt [REDACTED] located at Kunsan AB, ROK at 782 [REDACTED]. 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.
7. Confer with your counsel and reply, in writing, within 7 workdays, specifying the rights 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 written statements on 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.
8. 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 the Orderly Room.
9. If you request a board hearing and you fail to appear without good cause, your failure to appear constitutes a waiver of your right to be present at the hearing.
10. The discharge board or the discharge authority will make the finding and recommendations required under 10 U.S.C. 2005(g).
11. Execute the attached acknowledgment and return it to me immediately.

[REDACTED]
[REDACTED] Colonel, USAF
Commander

Attachments:

1. Supporting documents:
 - 1.1 AF Form 1137
 - 1.2 AF Form 3212
 - 1.3 AF Form 3070 (21 pp)
2. Airman's Acknowledgment