

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE A1C	AFSN/SSAN ██████████
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TYPE	PERSONAL APPEARANCE	X RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	
	X	

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
					X
					X
					X
					X
					X

ISSUES A94.11 A02.03	INDEX NUMBER A67.10	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 09 Sep 2003		CASE NUMBER FD-2003-00169		
			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: 9/9/2003

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE	CASE NUMBER FD-2003-00169
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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 available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge is denied.

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

Issue 1. Applicant was discharged for minor disciplinary infractions. The records indicated the applicant received two Articles 15, a Letter of Reprimand, two Records of Individual Counseling and an Unfavorable Information File for misconduct. The misconduct included several instances of dereliction of duty, and three instances of disobeying lawful orders. He also had an Enlisted Performance Report that was rated an overall referral "2" which noted his lack of initiative, and repeated problems with project completion. Applicant contends his new First Sergeant was making an example of him to prove to the unit that he (the First Sergeant) "meant business," and that the First Sergeant lied in order to effect the discharge. The records review disclosed no documents supporting this contention, nor did applicant submit any evidence of such other than his personal assertions. In the absence of such evidence, the Board finds this issue without merit. The DRB opined that through the unit's administrative actions, the applicant had ample opportunities to change his negative behavior. The Board concluded the misconduct was a significant departure from conduct expected of all military members, and therefore the characterization of the discharge received by the applicant was appropriate.

NOTE: During its review, the Board discovered the applicant may have been entitled to an administrative discharge board (ADB), as his total service (inactive during the delayed enlistment and active) appeared to have exceeded 6 years. There was no indication in the record that he was provided an opportunity to contest his discharge at an ADB. Additionally, the Board noted that at the time of the discharge, after consulting with legal counsel, member waived his right to submit statements on his own behalf, and requested his discharge be processed "with due diligence." The Board, in denying applicant's appeal, determined that, based on the available evidence, if applicant had requested an ADB, it would likely have upheld the commander's recommendation to discharge the applicant with an under honorable conditions (general) discharge. Thus, the Board concluded the failure to offer him this opportunity was a harmless error.

In summary, the Board found no evidence of impropriety or inequity in this case on which to base an upgrade of 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

[REDACTED]
[REDACTED]
(Former A1C) (HGH SRA)

MISSING MEDICAL RECORDS

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 15 Feb 01 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 7 May 75. Enlmt Age: 19 8/12. Disch Age: 25 9/12. Educ: HS DIPL. AFQT: N/A. A-67, E-73, G-72, M-67. PAFSC: 4E051 - Public Health Journeyman. DAS: 13 Jul 95.

b. Prior Sv: (1) AFRes 28 Jan 95 - 31 Jan 95 (4 days) (Inactive).

(2) Enlisted as Amn 1 Feb 95 for 4 yrs. Svd: 3 yrs 2 months 0 days, all AMS. AIC - 1 Dec 95. SRA - 1 Feb 98. EPRs: 5,4.

3. **SERVICE UNDER REVIEW:**

a. Reenlisted as SrA 1 Apr 98 for 4 yrs. Svd: 2 Yrs 10 Mo 14 Das, all AMS.

b. Grade Status: A1C - 26 Jan 01 (Article 15, 26 Jan 01)

c. Time Lost: None.

d. Art 15's: (1) 26 Jan 01, Scott AFB, IL - Article 92. You, having knowledge of a lawful order issued by Capt [REDACTED] to cease all contact until further notice with SrA [REDACTED], an order which it was your duty to obey, did, at or near Belleville, Illinois, on or about 17 Jan 01, fail to obey the same by wrongfully inviting SrA [REDACTED] into your apartment. Reduction to A1C, 14 days extra duty, and a reprimand. (No appeal) (No mitigation)

(2) 20 Jul 00, Scott AFB, IL - Article 92. You, who knew of your duties, on or about 28 Jun 00, were derelict in the performance of those duties in that you by culpable inefficiency failed to perform a complete walk-through of the Commissary, to include the retrieval of customer complaint forms and performing a check-in with the Commissary Office, as it was your duty to do. You, who knew of your duties, on or about 28 Jun 00, were derelict in the performance of those duties in that you by culpable inefficiency failed to prepare the Commander's Fitness Challenge report or to find a

replacement to do so for you while on leave or TDY, as it was your duty to do. You, having knowledge of a lawful order issued by SSgt [REDACTED] to remove a cart from the third floor of Building 1500 to the basement of Building 1500, an order which it was your duty to obey, did, between on or about 29 Jun 00 and on or about 5 Jul 00, fail to obey the same by failing to take the cart to the basement of Building 1500. You, who knew of your duties, on or about 2 May 00 and on or about 5 Jul 00, were derelict in the performance of those duties in that you by culpable inefficiency failed to locate or recreate an ergonomic evaluation letter as a client from Neurology, as it was your duty to do. Suspended reduction to A1C, forfeiture of \$50.00 pay per month for two months, and 15 days extra duty.
(No appeal) (No mitigation)

- e. Additional: RIC, 13 SEP 00 - Dereliction of duty.
LOR, 27 JUN 00 - Failure to obey an order.
RIC, 03 MAY 00 - Dereliction of duty.

f. CM: None.

- g. Record of SV: 1 Oct 97 - 30 Sep 98 Scott AFB 3 (Annual)
1 Oct 98 - 30 Sep 99 Scott AFB 4 (Annual)
1 Oct 99 - 30 Sep 00 Scott AFB 2 (Annual) REF

(Discharged from Scott AFB)

h. Awards & Decs: AFAM, AFOUA, AFGCM, NDSM, AFLSAR, NCOPMER, AFTR.

- i. Stmt of Sv: TMS: (6) Yrs (0) Mos (19) Das
TAMS: (6) Yrs (0) Mos (15) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 5 Apr 03.
(Change Discharge to Honorable)

Issue 1: I was discharged for violating a "No-Contact Order" that was issued because of a relationship I was involved in prior to my divorce being finalized. I was legally seperated (sic) from my wife at the time, but my first sergeant was new to my base and said he had to prove that he meant "business." He stated that he had to kick someone out of the Air Force in his first month on station. He even lied to my Commander about statements made by my supervisor and Flight Commander in order to get my discharge. He was subsequently fired for abuse of authority.

ATCH
None.

15JUL03/ia

31 JAN 2001

MEMORANDUM FOR AIRMAN FIRST CLASS [REDACTED]

FROM: 375 AMDS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Minor Disciplinary Infractions according to AFD 36-32 and AFI 36-3208, under the provisions of paragraph 5.49. This action could result in your separation with an Honorable, under honorable conditions (General) discharge, or Under Other Than Honorable Conditions (UOTHC) discharge. If my recommendation is approved, your service will be characterized as under honorable conditions (general) discharge.

2. My reasons for this action are:

a. On or about 2 May 2000, you missed a suspense for which there was no validated or authorized excuse. For this offense you received a Letter of Counseling, dated 3 May 00 (Atch 1/A).

b. On 27 June 2000, you disobeyed a lawful order given to you by Maj [REDACTED], your flight commander, by participating in softball on 23 June 2000, after being placed on a physical profile on 19 June 2000 that prohibited you from sports activities. For this offense, you received a Letter of Reprimand, dated 27 Jun 00 (Atch 1/B).

c. On or about 28 Jun 2000, you failed to perform a complete walk-through of the Commissary, to include the retrieval of customer complaint forms and performing a check-in with the Commissary Office, as it was your duty to do.

d. On or about 28 June 2000, you failed to prepare the Commander's Fitness Challenge report or to find a replacement to do so while on leave or TDY, as it was your duty to do.

e. Between on or about 29 June 2000 and or about 5 July 2000, you disobeyed a lawful order issued by Staff Sergeant [REDACTED] to remove a cart from the third floor of Building 1500.

f. On or about 2 May 2000 and on or about 5 July 2000, you failed to locate or recreate an ergonomic evaluation letter as a client from Neurology, as it was your duty to do. For the offenses listed in paragraphs 2(c-f), you received an Article 15, dated 20 July 2000, and an Unfavorable Information File was established (Atch 1/C).

g. On or about 06 September 2000, you failed to secure your work area at the end of the duty day to include sensitive patient records. For this offense you received a Letter of Counseling, dated 13 Sep 00 (Atch 1/D).

h. On or about 17 January 2001, you disobeyed a lawful order issued by Captain [REDACTED] to cease all contact with Senior Airman [REDACTED] an order which it was your duty to obey. For this offense, you received an Article 15, dated 26 Jan 01 (Atch 1/D).

3. Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The commander exercising SPCM jurisdiction or a higher authority will decide whether you will be discharged or retained in the Air Force. If you are discharged, you will be ineligible for reenlistment in the Air Force.

4. You must report to the 375 MDG, Scott Air Force Base, Illinois, Physical Examinations Section with your medical records for a doctor to determine if further action is required.

5. Before close of business tomorrow (or the next duty day) you will contact Special Actions at Military Pay at DSN 576-2665, to make arrangements concerning your military pay.

6. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult with the Area Defense Counsel, Bldg 7, on _____ at _____ hours. Instead of the appointed counsel, you may have other counsel, if the lawyer you request is in the active military service, who is reasonably available as determined according to AFI 51-201. In addition to or in lieu of military counsel, you have the right to employ civilian counsel at your own expense. The Air Force does not pay expenses incidental to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.

7. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me with in **3 duty days** of your receipt of this letter, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

8. If you fail to consult counsel or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.

9. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement of 1974 as explained in AFI 36-3208. A copy of AFI 36-3208 is available for your use in the squadron orderly room or local Area Defense Counsel's office.

10. Execute the attached acknowledgement and return it to me immediately.

[REDACTED]
[REDACTED] Col, USAF
Commander, 375 AMDS

Attachments:

1. Supporting documentation
2. Airman's Acknowledgement