

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE Amn	AFSN/SSAN ██████████
--	---------------------	--------------------------------

TYPE	<input checked="" type="checkbox"/> PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	██████████ The American Legion, Washington, D.C.

MEMBER SITTING	NOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
	X+				
	X+				
					X
					X
	X+				

ISSUES A94.06	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	
HEARING DATE 06 Nov 2003	CASE NUMBER FD-2003-00172		COUNSEL'S RELEASE TO THE BOARD	
			ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE	
			TAPE RECORDING OF PERSONAL APPEARANCE	

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

Case heard at Washington, D.C.

Advise applicant of the decision of the Board.

+ Change Reason and Authority to Secretarial Authority

ENDORSEMENT		DATE 11/06/2003
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, 3RD FLOOR ANDREWS AFB, MD 20762-7002	

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2003-00172

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the reason and authority for the discharge.

The applicant, his wife and his attorney made a personal appearance before the Discharge Review Board (DRB) on 6 Nov 03, Andrews AFB, MD.

The following additional exhibits were submitted at the hearing:

Exhibit 6: Character Letter, undated, from [REDACTED]

Exhibit 7: College Transcript

Exhibit 8: KS Motor Vehicle Report, dated 30 Oct 03

Exhibit 9: Copy of B.A Degree from [REDACTED] College

Exhibit 10: Statement from wife, [REDACTED], undated

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

FINDINGS: The Board grants the requested relief. Upgrade of discharge to Honorable, change of reason, and authority is approved.

The Board finds that the evidence of record and that provided by applicant substantiates an impropriety that would fully justify a change of discharge. In addition, based upon the record and evidence provided by applicant, the Board also finds the applicant's characterization of discharge inequitable.

ISSUE:

The record reflected that the applicant received (in sequence) a Letter of Counseling, a Letter of Reprimand, and an Article 15 for misconduct involving unauthorized computer software and personal files on a government computer and, in the latter two actions, failure to obey/comply with a lawful order. An additional specification of the Article 15 involved wrongful appropriation of computer software and equipment. With the exception of the wrongful appropriation specification, the Board found the preponderance of evidence in the record and provided during the applicant's testimony indicated he had committed all the infractions of which he was accused. The Board paid particular attention to the failure-to-obey specifications in that, contrary to the applicant's testimony, as an experienced computer network administrator the applicant should have been fully aware of the directives and guidelines regarding network security and prohibitions, and should have set the example in demonstrating compliance. However, the Board also noted the evidence in the file that the commander may have used additional evidence not provided to the applicant in determining whether to punish him under Article 15, thereby bringing into question whether the applicant was afforded appropriate due process. While the Board does not condone the applicant's misconduct, the Board did find the lack of due process and the unproven wrongful appropriation charge to be mitigating factors. When balanced against the entirety of the applicant's Air Force service, the majority of the Board found the discharge action and the characterization of his service to be unduly harsh and, therefore, inequitable.

CONCLUSIONS:

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.

Attachment:

Examiner's Brief

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

[REDACTED]
(Former AMN) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 15 Nov 93 UP AFR 39-10, para 5-46 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 23 Jul 68. Enlmt Age: 20 4/12. Disch Age: 25 3/12. Educ: HS DIPL. AFQT: N/A. A-89, E-93, G-88, M-85. PAFSC: 3C032 - Comm-Computer Systems Operator. DAS: 17 Apr 90.

b. Prior Sv: (1) AFRes 9 Dec 88 - 13 Dec 88 (5 Days) (Inactive).

(2) Enld as AMN 14 Dec 88 for 4 yrs. Svd: 3 Yrs 3 Mos, 20 Das, all AMS. A1C - 14 OCT 89. SRA - 14 DEC 91. EPRs: 3,4,5.

3. **SERVICE UNDER REVIEW:**

a. Reenld as SRA 3 Apr 92 for 4 yrs. Svd: 1 Yr 7 Mos 13 Das, all AMS.

b. Grade Status: AMN - 21 SEP 93 (Article 15, 20 Sep 93)

c. Time Lost: None.

d. Art 15's: (1) 20 Sep 93, Scott AFB, IL - Article 92. You, having knowledge of a lawful order issued by Lt Col [REDACTED], not to improperly use or use without authorization, government computer hardware or software, an order which it was your duty to obey, did, on or about 14 May 93, fail to obey the same. Article 121. You did, between on or about 25 Nov 92 and 14 May 93, wrongfully appropriate computer hardware and software, of a value of more than \$100.00, the property of USTRANSCOM. Recution to AMN, and forfeiture of \$200 pay. (Appeal/Denied) (No mitigation)

e. Additional: LOR, 24 NOV 92 - Violation of a direct order by the unauthorized and improper use of a government computer.
MEMO, 1 SEP 91 - Illegal and unauthorized software in a government computer.

f. CM: None.

g. Record of SV: 6 Sep 91 - 05 Sep 92 Scott AFB 4 (Annual)
6 Sep 92 - 10 Jan 93 Scott AFB 3 (CRO)

(Discharged from Scott AFB)

h. Awards & Decs: JMUA, AFGCM, NDSM, AFOSTR, NCOPMEGR, AFTR.

i. Stmt of Sv: TMS: (4) Yrs (11) Mos (7) Das
TAMS: (4) Yrs (11) Mos (2) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 4 Apr 02.
(Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF

ATCH

1. Applicant's Issues.
2. Basic Training Honor Graduate Ribbon.
3. Nomination for Airman of the Quarter.
4. Promotion to SRA.
5. Discharge Certificate.
6. Reenlistment Document.
7. Nomination for Service Member of the Quarter.
8. Notice of Counseling.
9. Letter of Reprimand.
10. Witness Statements.
11. Memo for Record.
12. Enlisted Performance Reports.
13. Article 15 Proceedings.

19May03/cr

**Attachment #1**

Item 1	Honor Graduate Ribbon
Item 2	Nomination for Airman of the Quarter
Item 3	Enlisted Performance Report – April 1990
Item 4	Enlisted Performance Report – August 1990
Item 5	Enlisted Performance Report – September 1991
Item 6	Promotion to E4 – Senior Airman
Item 7	Honorable Discharge
Item 8	Re-Enlistment Form
Item 9	Letter of Nomination for Service Member of the Quarter
Item 10	Letter of Counseling
Item 11	Enlisted Performance Report – September 1992
Item 12	Letter of Reprimand
Item 13	Enlisted Performance Report – April 1993
Item 14	Record of Nonjudicial Punishment Proceedings
Item 15	Statement of Suspect/Witness
Item 16	Statement of Suspect/Witness
Item 17	Statement of Suspect/Witness
Item 18	Response to Nonjudicial Punishment Action
Item 19	Memo for Record
Item 20	Appeal of Punishment

Attachment #2

December 1988 – Enlisted in the United States Air Force	
January 1989 – Honor Graduate – Basic Training	Item 1
July 1989 – Airman of the Quarter	Item 2
April 1990 – Rating of 3	Item 3
August 1990 – Rating of 5, changed by commander to 4	Item 4
September 1991 – Rating of 5	Item 5
November 1991- Promoted to E4	Item 6
April 1992 – Honorable Discharge	Item 7
April 1992 – Re-enlisted	Item 8
June 1992 – Nominated for Service Member of Quarter	Item 9
September 1992 – Letter of counseling	Item 10
September 1992 – Rating of 4	Item 11
November 1992 – Letter of Reprimand	Item 12
April 1993 – Rating of 3	Item 13
September 1993 – Article 15	Item 14
October 1993 – Unfavorable Information File Action	
November 1993 – Discharge	

Prior to September 1992, my service record had been exemplary. I was an Honor Graduate from basic training, was Airman of the Quarter in my first duty station – Pirinlik Turkey, had high ratings, received an Honorable Discharge in 1992, received the Air Force Good Conduct ribbon, as well as being nominated for Service Member of the Quarter in 1992.

The letter of counseling I received in September 1992 related to shareware and personal software that I had used in my support of my job as well as personal files. The Transcom Security Officer (TSO) removed all unauthorized and shareware software from my machine. Despite this letter of counseling, I received a rating of 4 in September 1992.

The Letter of Reprimand I received in November 1992 related to personal files that I had created using authorized, common, off-the-shelf software like Power Point and Excel. Most of these files had been on my machine for months, even after the TSO removed all unauthorized software and shareware. These personal files included a budget, a Power Point slide consisting of a football play, as well as a few personal letters that I had typed in Microsoft Word. At this time, I had not installed any shareware or unauthorized software. I was punished because of personal files created using authorized software that should have been removed when the TSO originally removed unauthorized software. In hindsight, I probably should have argued the Letter of Reprimand and submitted a written rebuttal.

My service, prior to the Letter of Reprimand, had been unquestioned. I do not believe that a period of less than one year should override the accomplishments of 4 years. A General Discharge minimizes the accomplishments of five years of service, even taking into account the Article 15. I respectfully request you change my discharge type from General to Honorable based on my service accomplishments over the five year period.

Attachment #3

Article 15 Proceedings	Item 14
Statement #1	Item 15
Statement #2	Item 16
Statement #3	Item 17
Response to Non-judicial Punishment Action	Item 18
Memo for Record	Item 19
Appeal for Punishment	Item 20

According to the Article 15 I received, I was punished for the following:

- A. Disobeying a lawful order not to improperly use or use without authorization government hardware/software.
- B. Wrongfully appropriate computer hardware and software of a value of more than \$100.

Item A

This relates to a letter of counseling I received in September 1992 concerning the use of government owned hardware/software. I had created personal files using government-authorized software (retail products like Power Point and Excel). The letter of counseling advises me to "maintain systems on your government computer IAW appropriate regulations and directives." (see Item 10) I received a Letter of Reprimand in November 1992 as outlined above for allegedly disobeying the same order. As outlined above, the Letter of Reprimand was questionable at best.

The Article 15 I received alleges that I disobeyed this order on May 14, 1993. The circumstances of this incident are detailed in Item 19. As I was due to PCS to my next assignment, I was cleaning up my files from the common-use computers in the work area. I found many files on different pc's throughout the duty section as each person could sit down and use any pc.

On the pc that [REDACTED] used I found a file with my name on it. I was the only [REDACTED] in the work area and the file name was [REDACTED]. I had named various files at other times using that type of naming convention. I quickly opened the file, and then copied it to my home directory. After I reviewed the file on my home directory, I then deleted it from my home directory, not the pc that [REDACTED] used.

My actions were not in violation of the order I received in September 1992. I was authorized to use any computer in the work area, I moved a file to my home directory, and deleted it from my home directory.

Furthermore, Lt Col [REDACTED] Memo for Record (Item 19) did not understand the issue. It is evident in his response that he did not understand the difference between the local drive on a pc and the home drive on the network. In Item 15, according to [REDACTED] the file I retrieved was on the pc that [REDACTED] normally used. He goes on to describe how I copied the file my home directory on the network. [REDACTED] alleges in the second paragraph "SRA [REDACTED] therefore accessed SSG [REDACTED] home directory to gain access to the

██████████ file, thereby inappropriately using his supervisory access." Neither Item 15 nor Item 16 support his conclusion. I did not inappropriately use my access. I used a common computer, accessed a file with my name on it, copied it to my home directory, and deleted it from my home directory.

Item B

This relates to items that I had in my possession and tried to return. On May 12, I emptied my desk and removed all my personal items from my work area (see Item 18). I accidentally had packed up some diskettes and a mouse that belonged to Transcom. As I was unable to return to my work area, I asked a co-worker to return them for me (see Items 16 & 17). As I described in Item 18, I had no home computer and these items were of no use to me. I had no intent to take these items from Transcom. I was later punished for trying to return them of my own accord. It would have been very easy to just throw them away and forget them, but I did the right thing and tried to return them.

FROM: USTRANSCOM/TCJ1

21 Oct 93

SUBJ: Notification Letter

TO: [REDACTED]
[REDACTED]

1. I am recommending your discharge from the United States Air Force for minor disciplinary infractions. The authority for this action is AFR 39-10, paragraph 5-46. If my recommendation discharge is approved, your service may be characterized as Honorable or General. I am recommending that your service be characterized as General (Under Honorable Conditions).

2. My reasons for this action are:

a. On or about 31 Aug 92, you received a disciplinary Notice of Counseling for violating several DOD, USTRANSCOM, and Air Force regulations regarding the improper and unauthorized use of government owned computer hardware/software.

b. On or about 26 Oct 92, you violated a direct order by continuing to improperly use, without authorization, government owned computer hardware/software. For this offense, you received a Letter of Reprimand dated 24 Nov 92.

c. On or about 14 May 93, you violated a direct order by continuing to improperly use, without authorization, government owned computer hardware/software. Between on or about 25 Nov 92 and 14 May 93, you wrongfully appropriated computer hardware and software, the property of USTRANSCOM. For these offenses, you received an Article 15 dated 15 Sep 93, with an Unfavorable Information File entry.

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 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, Building P-7, on 22 October 1993, at 1330 hours. You may consult civilian counsel at your own expense.

5. You have been scheduled for a medical examination. You must report to USAF Medical Center Scott, Physical Examinations Section, at 0730 hours on 25 October 1993 for the examination.

6. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 1700 hours on 26 October 1993, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

7. 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.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, Attachment 2. A copy of AFR 39-10 is available for your use in the squadron orderly room.



2 Atch

1. LOR, dated 24 Nov 92
2. Art 15, dated 15 Sep 93