

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE

AFSN/SSAN

AB

TYPE GEN

X

PERSONAL APPEARANCE

RECORD REVIEW

COUNSEL

NAME OF COUNSEL AND OR ORGANIZATION

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

A62.05

INDEX NUMBER

A62.00

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

ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE

TAPE RECORDING OF PERSONAL APPEARANCE

HEARING DATE

05 Jan 2005

CASE NUMBER

FD-2003-00278

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.

INDORSEMENT

DATE: 1/5/2005

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

AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change his reenlistment code.

The applicant was offered a personal appearance before the Discharge Review Board 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 and change of reenlistment code are denied.

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

Issue 1. Applicant was discharged for fraudulent enlistment. Member also had an Article 15 for underage drinking and driving a car while drunk resulting in a motor vehicle accident causing serious bodily injury to himself, as well as a Letter of Reprimand for failure to go. Member's drunk-driving accident occurred while he was on leave in a different state than where he was assigned. His hospitalization caused him to be unable to return to duty when expected, and further resulted in his inability to continue performing his duties as a Security Forces member. During the course of determining the facts surrounding this incident, it was then learned that member had a pre-service drunk driving conviction which resulted in a motor vehicle accident with a civilian police cruiser, which part of his sentence required he make restitution for the damages amounting to between \$4,000.00 and \$5,000.00. He failed to do so. When applicant entered the military, he failed to disclose this earlier civilian conviction. At the time of the discharge, member consulted counsel and submitted a statement in his own behalf in which he admitted he withheld information on his enlistment forms, claiming the recruiter told him to, and requesting retention, or in the alternative, an honorable discharge. He also noted his accomplishments while in the Air Force and submitted several character references from co-workers. The applicant's contention of recruiter misconduct was fully explored prior to his discharge by his chain of command, who also referred the matter to the Air Force Office of Special Investigations. The Report of Investigation disclosed that the recruiter and the recruiting squadron commander denied any recruiter misconduct, noting that enlistment waivers for drunk driving convictions were fairly common and easy to obtain, and they would have requested one had they know of applicant's conviction. In recommending against retention or an honorable characterization of service, member's unit commander notes that member failed to learn a lesson from his first drunk driving conviction as evidenced by the second drunk driving incident. Additionally, member apparently failed to disclose the reason for his injuries and it was only after the chain of command investigated that they learned of both drunk-driving accidents. The commander states that even when confronted with this information, he continued to attempt to deceive them. The Board could find no evidence of an impropriety in processing the discharge.

Issue 2. Applicant now states his record of achievements while in the Air Force may provide a basis on which to justify an upgrade of his discharge. Because he received an administrative discharge, not a punitive discharge, the Board must find an inequity or impropriety on which to base an upgrade. The Board noted that the types of offenses applicant was arrested for and fraudulent enlistment constitute serious misconduct that is not compatible with Air Force standards. Additionally, were it not for the falsification of his enlistment documents, applicant may not have been allowed into the Air Force. The Board finds the discharge proper; the records review disclosed no inequity or impropriety on which to base an upgrade.

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

[REDACTED]

(Former AB) (HGH AMN)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 20 Mar 03 UP AFI 36-3208, para 5.15 (Fraudulent Entry Into Military Service). Appeals for Honorable Discharge and to Change the RE Code.

2. **BACKGROUND:**

a. DOB: 2 Feb 82. Enlmt Age: 19 8/12. Disch Age: 21 1/12. Educ: HS DIPL. AFQT: N/A. A-42, E-47, G-53, M-50. PAFSC: 3P031A - Security Apprentice. DAS: 24 May 02.

b. Prior Sv: (1) AFRes 17 Oct 01 - 2 Jan 02 (2 months 16 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 3 Jan 02 for 4 yrs. Svd: 1 Yrs 2 Mo 7 Das, of which AMS is 0 yrs 0 months 0 days (No credit given due to fraudulent entry into military service)

b. Grade Status: AB - 10 Feb 03 (Article 15, 10 Feb 03)
AMN - 8 Jul 02

c. Time Lost: None.

d. Art 15's: (1) 10 Feb 03, Ellsworth AFB, SD - Article 92. You, who knew of your duties, at or near Wheeling, West Virginia, on or about 13 Aug 02, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcoholic beverages while under the state legal drinking age of 21, as it was your duty to do. Article 111. You did, at or near Wheeling, West Virginia, on or about 13 Aug 02, at Glenns Run road, operate a vehicle to wit: a passenger car, while drunk, and did thereby cause said vehicle to flip over the guardrail. Reduction to AB, 30 days restriction, 30 days extra duty, and a reprimand. (No appeal) (No mitigation)

e. Additional: LOC, 13 DEC 02 - Failure to go.

f. CM: None.

g. Record of SV: None.

(Discharged from Ellsworth AFB)

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (0) Yrs (0) Mos (0) Das
TAMS: (0) Yrs (0) Mos (0) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 3 May 03.
(Change Discharge to Honorable and Change the RE Code)

Issue 1: In my belief, and many other Air Force personels (sic) belief, I did very well while serving in the Air Force. I believe I had very much potential to be a great leader someday in the Air Force. I feel that I was cheated, because of a recruiter with 6 years of military experience told me to lie to the USAF. I feel that I deserve a second chance. Therefore, I am asking that my reentry code be lowered. I would just like the chance to get back into another Branch of service. If given that I know that I would go above and beyond to exceed all military standards. Thank you very much for your time.

ATCH

1. Commissioner Of West Virginia of Motor Vehicles Hearing Results.
2. AF Form 1168.
3. Congressional Correspondence.

17JUL03/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 28TH BOMB WING (ACC)
ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA

MAR 05 2003

MEMORANDUM FOR [REDACTED] 28 SFS

FROM: 28 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for fraudulent enlistment. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.15. If my recommendation is approved, your service will be characterized as honorable or under honorable conditions (general). I am recommending that your service be characterized as under honorable conditions (general).

2. My reason for this action is: You did, at or near Cannonsburg, Pennsylvania, between on or about 17 Oct 01 and 2 Jan 02, by deliberate concealment of the fact that you had a civilian conviction for driving under the influence in Ohio county, West Virginia, procure yourself to be enlisted as an Airman in the United States Air Force, and did thereafter, at or near Ellsworth Air Force Base, South Dakota, receive pay and allowances under the enlistment so procured.

3. You have other derogatory information in your military record from your current enlistment, which is outlined below. This information is not being cited as a basis for discharge, however, it may be considered for characterization of service and in deciding whether you should be discharged or retained.

a. You did, at or near Ellsworth Air Force Base, South Dakota, on or about 13 Dec 02, without authority, fail to go at the time prescribed to your appointed place of duty. For this action, you received a Letter of Counseling (LOC) on 13 Dec 02.

b. You, who knew of your duties, at or near Wheeling, West Virginia, on or about 13 Aug 02, were derelict in the performance of those duties in that you willfully failed to refrain from consuming alcoholic beverages while under the state legal drinking age of 21, as it was your duty to do. You did, at or near Wheeling, West Virginia, on or about 13 Aug 02, at Glenns Run road, operate a vehicle to wit: a passenger car, while drunk, and did thereby cause said vehicle to flip over the guardrail. For these actions, you received nonjudicial punishment under Article 15, UCMJ on 10 Feb 03. Punishment consisted of reduction to the grade of Airman Basic, restriction to the limits of Ellsworth Air Force Base, South Dakota for 30 days, 30 days extra duty, and a reprimand. These actions established your Unfavorable Information File (UIF).

4. 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 and, if you are discharged, how your discharge will be characterized. If you are discharged, you may be ineligible for reenlistment in the Air Force and any special pay, bonus, or education assistance funds may be subject to recoupment.

5. 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 [REDACTED] Area Defense Counsel, 385-2158, 1000 Ellsworth Street, Suite 1700 on 6 Mar 03 at 1500 hours. You may consult civilian counsel at your own expense.

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 10 MAR 03 at 1430 hours, 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 matters in your own behalf, your failure will constitute a waiver of your right to do so.

8. You have been scheduled for a medical examination. You must report to the ~~Flight Medicine / Family Practice A /~~ Family Practice B Section of the Base Clinic on 6 Mar 03 at 0830 hours for the examination. This is a mandatory appointment and you must be in uniform. You must report at least 20 minutes in advance to this appointment to complete necessary paperwork. Please have the attached Medical Examination for Separation/Retirement form completed at this time. Return this form to the Separations office.

9. You have been scheduled for a pre-separation briefing. You must report to the Family Support Center on 18 Mar 03 at 1430 hours. This is a mandatory appointment and you must be in uniform. You must report at least 15 minutes in advance to this appointment to complete any necessary paperwork.

10. 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 in your orderly room.

11. Execute the attached acknowledgment and return it to me immediately.

[REDACTED] USAF
Commander, 28th Security Forces Squadron

Attachments:

1. Supporting document
AFOSI Report - 22 Nov 02
2. Derogatory Data
 - a. LOC - 13 Dec 02
 - b. Article 15/UIF - 10 Feb 03
3. Airman's receipt of notification memorandum
4. DPMAR FM-21 (Medical Examination for Separation/Retirement)