

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

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

| | | | |
|----------------|-----------|--------------------------------------------|-----------------------------------------------|
| TYPE | X | PERSONAL APPEARANCE | RECORD REVIEW |
| COUNSEL | | NAME OF COUNSEL AND OR ORGANIZATION | ADDRESS AND OR ORGANIZATION OF COUNSEL |
| YES | No | ████████████████████ | ████████████████████ 30809-4828 |
| X | | | |

| MEMBER SITTING | VOTE OF THE BOARD | | | | |
|----------------|-------------------|-----|------|-------|------|
| | HON | GEN | UOHC | OTHER | DENY |
| | | | | | X |
| | | | | | X |
| | | | | | X |
| | | | | | X |
| | | | | | X |

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| ISSUES | A92.22 A01.39 A94.05 A02.21 | INDEX NUMBER | A73.00 | 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 |

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|---------------------|-------------|--------------------|---------------|
| HEARING DATE | 23 Apr 2004 | CASE NUMBER | FD-2003-00306 |
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Ft Gillem GA by video teleconference with Andrews AFB, MD.

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

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|--------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| INDORSEMENT | | DATE: 4/27/2004 |
| 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

FD-2003-00306

GENERAL: The applicant appeals for upgrade of discharge to honorable and to change the narrative reason for separation to expiration of his term of service. The applicant appeared with his counsel, Mr. [REDACTED] via video teleconference between Ft Gillem, GA and Andrews AFB, MD on 23 April 2004.

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

FINDINGS: Upgrade of discharge and change of reason and authority for discharge are denied. The Board finds the applicant did not submit sufficient evidence to warrant a change to either the characterization of his service or the narrative reason for separation. 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.

FACTS: The records indicate applicant received an Under Other Than Honorable Conditions (UOTHC) discharge. At the time of the discharge, the applicant's commander preferred court-martial charges against him following a shooting incident involving the applicant and one his friends. Though there is no dispute the applicant shot his friend, there was some concern about whether the shooting constituted a criminal offense. The government's evidence suggested the applicant's handling of the gun and subsequent shooting was "culpably negligent" and hence a criminal offense. The defense evidence pointed to a lesser degree of negligence which would have been a defense to the crime. At a critical hearing before trial, the military judge ruled he would admit government evidence adverse to the applicant from a civilian police officer and an AFOSI agent at his trial. Following the hearing, the applicant discussed his options with his military lawyer. After meeting with his lawyer, the applicant elected to offer to resign in lieu of going to trial. He later explained that he offered to resign in order to avoid the possibility of being confined. Though willing to go to trial, the applicant's commanders recognized that given the state of the evidence neither a conviction nor a separation was assured. For that reason, they recommended acceptance of the applicant's offer to resign. As noted, Air Force authorities accepted his offer to resign and separated him with a UOTHC.

ISSUES: The applicant claims he is entitled to the relief requested because his counsel's advice was inadequate, that his discharge was the product of unlawful command influence, the current service characterization does not accurately describe his service, and that his post-service conduct over the past 10 years warrants an upgrade to an honorable service characterization.

Issue 1. Applicant contends his discharge was inequitable because his lawyer gave him improper advice. Because the applicant's commanders had reservations about the court-martial's outcome, he believes his attorney's advice to resign in lieu of trial was inappropriate. The Board disagrees. At the time the applicant submitted his offer to resign, he just learned important evidence he had hoped to exclude from his trial would be admitted against him. The applicant's primary objective at that time was to avoid any possibility of confinement. Under these circumstances, his attorney's advice was neither improper nor inappropriate. In any event, it was the applicant's decision (not his attorney's) to resign rather than risk trying his case before a court-martial. The DRB found this issue to be without merit.

Issue 2: Applicant contends his discharge was the result of unlawful command influence. The applicant failed to provide credible evidence his commanders unfairly influenced the outcome of either his court-martial case or his discharge. The cases cited in his brief (US v. Thomas, 22 MJ 388 (CMA 1986) and US v. Levite, 25 MJ 334 (CMA 1987)) are not applicable to the applicant's case. The DRB found this issue to be without merit.

Issue 3: Applicant contends his UOTHC discharge does not properly reflect the quality of his service during the period under review. At his hearing, the applicant admitted he was under the influence of alcohol at the time of the shooting. Manipulating a handgun in that condition is, at a minimum, reckless conduct. The fact that his friend was seriously injured as a result of the applicant's poor judgment is a significant aggravating factor. The DRB concluded that his actions are significant departure from the conduct expected of an airman and fully warrant a UOTHC characterization.

Issue 4: The applicant contends his post-service conduct merits an upgrade to his service characterization. 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. The Board concluded the misconduct of the applicant appropriately characterized his term of service.

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

c. Time Lost: 9 Apr 81-13 Aug 81/15 Aug 94-26 Aug 94 (4 months 11 days).

d. Art 15's: None.

e. Additional: None.

f. CM: None.

g. Record of SV: 10 Jun 90 - 09 Jun 71 Shaw AFB 4 (Annual)
 10 Jun 91 - 16 May 92 Shaw AFB 5 (CRO)
 17 May 92 - 16 May 93 Shaw AFB 5 (Annual)
 17 May 93 - 16 May 94 Shaw AFB 5 (Annual)

(Discharged from Shaw AFB)

h. Awards & Decs: AFCM W/2 OLCS, AFOUA W/3 OLCS, AFGCM W/3 OLCS, NDSM, HSM, AFOSLTR, AFLSAR W/2 OLCS, AFTR.

i. Stmt of Sv: TMS: (15) Yrs (0) Mos (17) Das
 TAMS: (14) Yrs (11) Mos (17) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 18 Jun 03.
 (Change Discharge to Honorable)

ISSUES ATTACHED TO BRIEF.

ATCH

1. Applicant's Issues.
2. Resume.

1AUG03/ia

CHARGE SHEET

I. PERSONAL DATA

| | | | | | |
|----------------------------------------------------------------|---------------------|----------------------|-----------------------------------------------------------|------------------------------|---------------------|
| 1. NAME OF ACCUSED (Last, First, MI) [REDACTED] | | 2. SSN [REDACTED] | | 3. GRADE OR RANK TSgt | 4. PAY GRADE E-6 |
| 5. UNIT OR ORGANIZATION Shaw Air Force Base, South Carolina | | | | 6. CURRENT SERVICE | |
| | | | | a. INITIAL DATE 30 May 91 | b. TERM 6 years |
| 7. PAY PER MONTH | | | 8. NATURE OF RESTRAINT OF ACCUSED Pretrial confinement | | |
| a. BASIC | b. SEA/FOREIGN DUTY | c. TOTAL | | | |
| \$1,798.80 | \$0.00 | \$1,798.80 | | | |

II. CHARGES AND SPECIFICATIONS

10. CHARGE: VIOLATION OF THE UCMJ, ARTICLE 128

SPECIFICATION:

In that TECHNICAL SERGEANT [REDACTED] United States Air Force, 20th Services Squadron, Shaw Air Force Base, South Carolina, did, at or near Sumter, South Carolina, on or about 14 August 1994, commit an assault upon Master Sergeant [REDACTED] by shooting him in the body with a dangerous weapon, to wit: a loaded firearm.

Specification 2: In that TECHNICAL [REDACTED] United States Air Force, 20th Services Squadron, Shaw Air Force Base, South Carolina, did, at or near Sumter, South Carolina, on or about 14 August 1994, unlawfully shoot Master Sergeant [REDACTED] in the body with a loaded firearm.

III. PREFERRAL

| | | | | |
|-----------------------------------------------------|--|-------------------|------------------------------------------|--|
| 1a. NAME OF ACCUSER (Last, First, MI) [REDACTED] | | b. GRADE Major | c. ORGANIZATION OF ACCUSER [REDACTED] | |
| SIGNATURE [REDACTED] | | | e. DATE | |

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 7th day of September, 19 94, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.

[REDACTED]

Typed Name of Officer

20th Fighter Wing

Organization of Officer

Captain
[REDACTED]

Signature

Judge Advocate

Official Capacity to Administer Oath
(See R.C.M. 307(b)--must be commissioned officer)



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS NINTH AIR FORCE (ACC)
SHAW AIR FORCE BASE, SOUTH CAROLINA

FD2003-00306

11 JAN 1995

MEMORANDUM FOR 9 AF/CC


FROM: 9 AF/JAM
524 Shaw Drive
Shaw AFB, SC 29152-5029

SUBJ: Request for Discharge in Lieu of Trial by Court-Martial: TSgt [REDACTED]
[REDACTED] Shaw AFB, SC

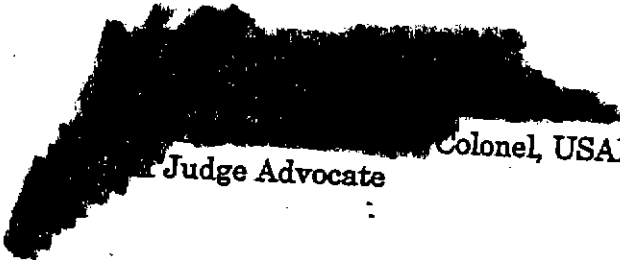
1. Summary of Facts: On 7 Sep 94, a charge and two specifications were preferred against TSgt [REDACTED]. Specification One alleges that the accused committed an assault upon MSgt [REDACTED] by shooting him in the body with a dangerous weapon. Specification Two alleges that the accused unlawfully shot MSgt [REDACTED] in the body with a loaded firearm. On 14 Aug 94, the accused hosted an all-day poker party at his off-base home. MSgt [REDACTED] and MSgt [REDACTED] were in attendance at the party. During the course of the day, the three drank beer and liquor. At about 2215 hours, as the three sergeants were preparing to go out to a Sumter night club, TSgt [REDACTED] was handling a pistol when it accidentally discharged, striking MSgt [REDACTED] in the back and traveling through his body, exiting through his chest. Upon realizing that MSgt [REDACTED] had been shot, the three NCOs went to the Shaw AFB Hospital where MSgt [REDACTED] underwent colostomy surgery and has since fully recovered. The three NCOs claim that the shooting was accidental and the facts and circumstances bears this out. The evidence also suggests that TSgt [REDACTED] conduct may have amounted to an aggravated assault and battery, based on a culpable negligence theory.
2. Discussion: I concur with 20 FW/CC's recommendation that 9 AF/CC approve the request. The accused's act of negligently handling a weapon, shooting a fellow airman is serious, however, considering the circumstances involved, an administrative discharge is appropriate.
3. Legal Sufficiency: The case is legally sufficient and in substantial procedural compliance with the provisions of AFR 39-10, Chapter 4. No errors prejudicial to the accused are present. No promises were made to the accused, and he submitted his written request after advice from her counsel.
4. Options: You have the following options in this case:
 - a. Disapprove the request for discharge and proceed with the trial.
 - b. Approve the request for discharge and direct that the accused be separated with an Honorable, General or Under Other Than Honorable Conditions discharge. Airmen discharged in lieu of trial by court-martial are not eligible for probation and rehabilitation (AFI 36-3208, paragraph 7.2.6).

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5. Recommendation: Approve the accused's request for discharge in lieu of trial by court-martial and direct that the accused be separated with an Under Other Than Honorable Conditions discharge without probation and rehabilitation.


Deputy Chief, Military Justice USAF

I concur.


Judge Advocate Colonel, USAF