

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) [REDACTED]				GRADE AB		AFSN/SSAN [REDACTED]																															
TYPE GEN		<input checked="" type="checkbox"/> PERSONAL APPEARANCE		RECORD REVIEW																																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">YES</td> <td style="padding: 2px;">No</td> </tr> <tr> <td style="padding: 2px;"><input checked="" type="checkbox"/></td> <td style="padding: 2px;"></td> </tr> </table>		YES	No	<input checked="" type="checkbox"/>		NAME OF COUNSEL AND OR ORGANIZATION [REDACTED]		ADDRESS AND OR ORGANIZATION OF COUNSEL Texas Veterans Commission																													
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HEARING DATE 07 Dec 2003		CASE NUMBER FD-2003-00426																																			
<p style="text-align: center; background-color: #cccccc;">APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE</p> <p>Case heard at Randolph AFB, Texas.</p> <p>*Secretarial Authority</p> <p>Advise applicant of the decision of the Board.</p>																																					
SIGNATURE OF RECORDER [REDACTED]				SIGNATURE OF BOARD PRESIDENT [REDACTED]																																	
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

FD2003-00426

GENERAL: The applicant appeals for upgrade of discharge to Honorable.

The applicant appeared and testified before the Discharge Review Board (DRB), with counsel, Mr. [REDACTED] of the Texas Veterans Commission at Randolph AFB on December 7, 2003. The following additional exhibits were submitted at the hearing:

Exhibit 5: D-Flight Weapons Security Duty Roster, 20 Sep 88

Exhibit 6: Statement from MSgt [REDACTED], undated

Exhibit 7: Sun Metro Job Verification Letter, 2 Dec 03

Exhibit 8: Character Letter from Lt Col [REDACTED]

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

FINDINGS: The Board grants the requested relief.

The discharge is upgraded to Honorable.

Reason is changed to Secretarial Authority.

The Board finds that neither the evidence of record nor that provided by applicant substantiates an impropriety that would justify upgrade of the discharge. However, based on the record and the testimony of the applicant, the Board finds that the applicant's character of discharge is inequitable.

ISSUE: Applicant contends discharge was inequitable because "it was too harsh". The information provided by the applicant and contained in his records was carefully reviewed by the DRB. The records indicated the applicant received one Article 15, five Letters of Reprimand, and one Record of Individual Counseling. The misconduct included failure to go, failed room inspection, dereliction of duty, late for work and failure to obey a lawful order. After a thorough and complete consideration of the information submitted by the applicant and contained in the records, the Board concluded there was sufficient mitigation to substantiate upgrade of 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.

However, 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 change of reason for discharge to 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]
[REDACTED]
(Former AB) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 14 Mar 89 UP AFR 39-10, para 5-46 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 2 Aug 66. Enlmt Age: 18 10/12. Disch Age: 22 7/12. Educ: HS DIPL. AFQT: N/A. A-70, E-35, G-41, M-57. PAFSC: 81150 - Security Specialist. DAS: 18 Jun 86.

b. Prior Sv: (1) AFRes 1 Jul 85 - 8 Jan 86 (6 months 8 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 9 Jan 86 for 4 yrs. Svd: 3 Yrs 2 Mo 6 Das, all AMS.

b. Grade Status: AB - 13 Feb 89 (Article 15, 13 Feb 89)
A1C - 9 May 87
AMN - 9 Jul 86

c. Time Lost: None.

d. Art 15's: (1) 13 Feb 89, Holloman AFB, NM - Article 86. You did, on or about 31 Jan 89, without authority, fail to go at the time prescribed to your appointed place of duty, to wit: Building 35, for equipment issue. Reduction to AB. (No appeal) (No mitigation)

e. Additional: LOR, 06 DEC 88 - Failed room inspection.
RIC, 05 DEC 88 - Failed room inspection.
LOR, 25 OCT 88 - Late for work.
LOR, 20 OCT 88 - Failure to obey a lawful order.
LOR, 11 OCT 88 - Dereliction of duty.
LOR, 20 SEP 88 - Failure to go.
LOR, 08 FEB 88 - Failure to go.

f. CM: None.

g. Record of SV: 9 Jan 86 - 8 Jan 87 Holloman AFB 9 (Annual)
9 Jan 87 - 8 Jan 88 Holloman AFB 9 (Annual)
9 Jan 88 - 8 Jan 89 Holloman AFB 8 (Annual)

(Discharged from Holloman AFB)

h. Awards & Decs: AFGCM, AFTR.

- i. Stmt of Sv: TMS: (3) Yrs (8) Mos (14) Das
TAMS: (3) Yrs (2) Mos (6) Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 26 Aug 03.
(Change Discharge to Honorable)

Issue 1: I would like the Board to consider my discharge upgrade. The reason for my General Discharge was work related. On Sep-21-88 I issued a weapon to a SSgt, who was not on a Weapons Restriction List. I was offered an Article 15 by Major [REDACTED] my 833 Police SQD (sic) Commander. I consider Article 15 as a very serious charge which I refused to accept. I presented myself to the Police SQD (sic) Board, which in return dropped the charges to a Letter of reprimand (sic). This was the first and only incident as to what my commander called a "Pattern of Misconduct." I feel Major [REDACTED] was in raged (sic) towards me for challenging his judgment of his Article 15 and continuing with his recommendation for early discharge. Only ten months left in the Air Force (sic). I then seeked (sic) Legal Military consultation and was advised I should not obtained (sic) Dishonorable Discharge. I accepted his early out. I know that he could or would not be able to use another type of Discharge or be able to lable (sic) me with a pattern of misconduct on Reason for Separation. Thank you for your consideration and time.

ATCH

1. Article 15 Written Presentation, 28 Sep 88.
2. Letter of Reprimand, 11 Oct 88.
3. Weapons Systems Security Duty Roster.
4. Personal Statement.
5. Letter of Reprimand, 6 Dec 88.
6. Personal Statement.
7. Article 15 Written Presentation, 6 Feb 89.
8. Statement Waiver, 6 Mar 89.
9. Three Airman Performance Reports.

3OCT03/ia



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 833D COMBAT SUPPORT GROUP (TAC)

HOLLOMAN AIR FORCE BASE NM 88330-5000

REPLY TO
ATTN OF:

833 SPS/CC

06 MAR 1989

SUBJECT:

Letter of Notification

TO:

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 is approved, your service will be characterized as Honorable, or General. I am recommending that your service be characterized as General.

2. My reasons for this action are:

a. On or about 31 January 1989, you failed to go at the time prescribed to your appointed place of duty, for which you received an Article 15. Your punishment was reduction to the rank of AB.

b. On or about 29 November 1988, you failed your room inspection, for which you received a Letter of Reprimand dated 6 December 1988.

c. On or about 28 November 1988, you received a "Marginal" in your room inspection, as evidenced by a Letter of Counseling dated 5 December 1988.

d. On or about 25 October 1988, you failed to go at the time prescribed to your appointed place of duty, for which you received a Letter of Reprimand.

e. On 19 and 20 October 1988, you did not have a proper haircut in compliance with AFR 35-10, and you failed to get a haircut as you were directed to do. For this you received a Letter of Reprimand.

f. On or about 21 September 1988, you failed to perform your duty by issuing an M-16 rifle to SSgt [REDACTED] who was placed on the weapon restriction list, for which you received a Letter of Reprimand.

g. On or about 17 September 1988, you failed to go at the time prescribed to your appointed place of duty, for which you received a Letter of Reprimand.

Readiness is our Profession

h. On or about 6 February 1988, you failed to go at the time prescribed to you appointed place of duty for which you received a Letter of Reprimand.

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 higher authority will decide whether you will be discharged or retained in the Air Force and, if you are discharged, how your service will be characterized. 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 the Area Defense Counsel on 6 March 1989 at 0900. You may consult civilian counsel at your own expense.


5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 8 March 1989 unless you request and receive an extension for good cause shown. I will send them to the separation authority.

6. 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.

7. You have completed a medical examination on 16 February 1989.

8. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 6. A copy of AFR 39-10 is available for your use in the orderly room.

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

 USAF
Commander

3 Atch

1. Supporting Documents for Reasons for Discharge
2. Documents containing Derogatory Information Which are not Listed in Letter of Notification
3. Airman's Receipt of Letter of Notification



DEPARTMENT OF THE AIR FORCE

HEADQUARTERS 833D AIR DIVISION (TAC)
HOLLOMAN AIR FORCE BASE NM 88330

REPLY TO

ATTN OF: JA (Capt [REDACTED], 7216)

7 Mar 89

SUBJECT: Legal Review of Proposed Discharge Action Under AFR 39-10 re AB
[REDACTED], 833 SPS

TO: CC

1. The attached file has been reviewed and found to be legally sufficient. The initiating commander, Major Belle, has recommended that the subject airman be discharged from the United States Air Force under the provisions of AFR 39-10, paragraph 5-46, for minor disciplinary infractions, with a General Discharge. In support of this action, the commander cites the following reasons:

a. On or about 31 January 1989, he failed to go at the time prescribed to his appointed place of duty, for which he received an Article 15. His punishment was reduction to the rank of AB.

b. On or about 29 November 1988, he failed his room inspection, for which he received a Letter of Reprimand dated 6 December 1988.

c. On or about 28 November 1988, he received a "Marginal" in his room inspection, as evidenced by a Letter of Counseling dated 5 December 1988.

d. On or about 25 October 1988, he failed to go at the time prescribed to his appointed place of duty, for which he received a Letter of Reprimand.

e. On 19 and 20 October 1988, he did not have a proper haircut in compliance with AFR 35-10, and he failed to get a haircut as he was directed to do. For this he received a Letter of Reprimand.

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h. On or about 6 February 1988, he failed to go at the time prescribed to his appointed place of duty for which he received a Letter of Reprimand.

Readiness is our Profession

2. AB [REDACTED] is 22 years of age. His TAFMSD is 9 Jan 86. He received notification of this proposed action on 6 Mar 89. After consulting with counsel, he waived his right to submit statements.

3. As the convening authority in this case, you have the following options:

a. Approve the General Discharge recommended by the initiating commander and order AB Portillo discharged from the United States Air Force;

b. Recommend approval of an Honorable Discharge, if appropriate, to the discharge authority, 12 AF/CC;

c. Approve the General Discharge recommended by the initiating commander or recommend approval of an Honorable Discharge to the discharge authority, if appropriate, providing for a conditional suspension of the discharge and rehabilitation measures;

d. Disapprove the recommendation of the initiating commander and order that AB Portillo be retained on active duty in the United States Air Force.

If you determine a General Discharge is appropriate, you are the final authority in this matter and your action will result in a final determination. If you recommend approval of an Honorable Discharge, you must forward the case file to the discharge authority, 12 AF/CC, along with a statement of reasons why the case warrants the issuance of such a characterization.

4. I find that the reasons listed in the commander's report are sufficient to warrant discharge under AFR 39-10, paragraph 5-46. Accordingly, I recommend that AB Portillo be discharged from the United States Air Force with a General Discharge. The reason for my recommendation is that significant negative aspects of his conduct and performance of duty outweigh the positive aspects of his military record. I do not recommend the respondent be offered the option of probation and rehabilitation under Chapter 7, AFR 39-10. The incidents documented in the case file demonstrate a clear disregard for Air Force standards, and thus makes it unlikely AB Portillo would successfully complete a program of probation and rehabilitation.

5. The file does not contain a report of medical examination as is required. It should be noted that no final discharge in this case can be directed until the report of medical examination has been made a part of the file and AB Portillo found medically

qual for preparation.

[REDACTED]
[REDACTED] Lt Col, USAF
Staff Judge Advocate

1 Atch
Case File