

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██████████	GRADE AMN	AFSN/SSAN ██████████
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TYPE GEN	<input checked="" type="checkbox"/>	PERSONAL APPEARANCE	RECORD REVIEW
COUNSEL		NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL
YES	No	██████████	Florida Department of Veteran's Affairs
<input checked="" type="checkbox"/>	<input type="checkbox"/>		

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

ISSUES	A95.00 A67.10	INDEX NUMBER	A67.10 A39.00	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	21 Apr 2004	CASE NUMBER	FD-2003-00456
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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 Washington, D.C. via video teleconferencing from Fort Gillem, GA. The board met in Washington, D.C.; the applicant and counsel were present in Fort Gillem, GA.

Advise applicant of the decision of the Board and the right to submit an application to the AFBCMR.

INDORSEMENT DATE: 4/23/2004

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
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AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

CASE NUMBER

FD-2003-00456

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

The applicant personally appeared before the Discharge Review Board (DRB).

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:

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The applicant stated that shortly before this incident another Security Forces airman at the same deployed duty station was caught using headphones while posted as a sentinel, and that this airman did not receive nonjudicial punishment for the offense. The applicant did not remember the airman's name, nor did he know specific details about the situation or the airman. In light of that case, the applicant argues that because he was not using the contraband material when he was caught he should not have received an Article 15. (The materials were in the applicant's backpack, which was left partially open at his post. He stated that he was not using the contraband at the time; rather, someone noticed them in his backpack.) Due to the lack of specific information pertaining to the alleged previous incident, the DRB had no evidence upon which to base a finding of inequity. The applicant was given ample opportunity to provide this information but stated he didn't know the airman's name, the airman's disciplinary record, or details of the case other than the airman was caught wearing earphones while posted on duty.

Issue 2. The applicant cited his desire to receive the G.I. Bill benefits as justification for upgrade. The DRB noted that when the applicant applied for these benefits, he signed a statement (DD Form 2366, on September 8, 1994) that he understood he must receive an Honorable discharge to receive future educational entitlements. The Board was sympathetic to the impact the loss of these benefits was having on the applicant, but this is not a matter of inequity or impropriety which would warrant an upgrade.

Issue 3. The records indicated the applicant received two Articles 15 and one letter of reprimand for misconduct. The DRB opined that through these administrative actions, the applicant had ample opportunities to change his negative behavior. The DRB concluded the misconduct was a significant departure from conduct expected of all military members. The characterization of the discharge received by the applicant was found to be appropriate.

Issue 4. While not raised in his application, the applicant noted that since separating from the Air Force, he has secured employment with the Transportation Security Administration and that he has achieved the position of lead screener. 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 DRB concluded the misconduct of the applicant appropriately characterized his term of service.

Issue 5. While not raised in his application, the applicant noted that he would like to reenter the military but that his reenlistment code prevented him from doing so. After a thorough review of the applicant's record and evidence presented at the hearing the DRB found no basis exists for changing the reenlistment code.

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

(Former AMN) (HGH A1C)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 13 Mar 01 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Disch.

2. BACKGROUND:

a. DOB: 7 Mar 78. Enlmt Age: 20 3/12. Disch Age: 23 0/12. Educ: HS DIPL. AFQT: N/A. A-86, E-68, G-68, M-45. PAFSC: 3P031 - Security Forces Apprentice. DAS: 15 Feb 99.

b. Prior Sv: (1) AFRes 30 Jun 98 - 8 Sep 98 (2 months 10 days) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enlisted as AB 9 Sep 98 for 6 yrs. Svd: 2 Yrs 6 Mo 5 Das, all AMS.

b. Grade Status: AMN - 8 Jan 01 (Article 15, 8 Jan 01)
A1C - 24 Oct 98

c. Time Lost: None.

d. Art 15's: (1) 8 Jan 01, Robins AFB, GA - Article 121. You, did, at or near Robins AFB, GA, on or about 15 Dec 00, steal a Samsung celluar telephone, of a value of about \$700.00, the property of Sprint PCS. Reduction to Airman, and 45 days extra duty. (No appeal) (No mitigation)

(2) 23 Jun 00, Prince Sultan AB, Saudi Arabia - Article 92. You, having knowledge of a lawful order issued by Captain [REDACTED], to wit: That the only authorized reading material on post will be Special Security Instructions, Squadron Operating Instructions, and that commercial radios are not allowed while on post, Section 8, paragraph 8.3, and 8.4, Special Security Instruction Juliet-3, dated 15 Mar 00, an order which it was your duty to obey, did, on or about 17 Jun 00, fail to obey the same by wrongfully having in your possession while on post reading other than Special Security Instructions, Squadron Operating Instructions, and a compact disk player with headphones. Suspended reduction to Airman, and forfeiture of \$140.00 pay. (No appeal) (No mitigation)

e. Additional: LOR, 21 OCT 99 - Sleeping on post.

f. CM: None.

g. Record of SV: 9 Sep 98 - 15 Apr 00 Robins AFB 4 (HAF Dir)

(Discharged from Robins AFB)

h. Awards & Decs: AFTR.

i. Stmt of Sv: TMS: (3) Yrs (1) Mos (12) Das
TAMS: (2) Yrs (6) Mos (5) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Sep 03.
(Change Discharge to Honorable)

Issue 1: I was discharged from the military primarily because of an incident concerning a stolen phone from the local BX. I had told my commander that it was an accident based on the fact my phone and the phone in question were very similar. I need this to be reviewed and overturned as I can have the option to reenter the military and use my GI bill (sic) benefits to complete my education to better my life.

ATCH

None.

29OCT03/ia



DEPARTMENT OF THE AIR FORCE
78TH SECURITY FORCES SQUADRON (AFMC)
ROBINS AIR FORCE BASE, GEORGIA

20 Feb 01

MEMORANDUM FOR AMN [REDACTED]

FROM: 78 SFS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for Minor Disciplinary Infractions. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.49. If my recommendation is approved, your service will be characterized as honorable, general or under other than honorable conditions. I am recommending that your service be characterized as general.

2. My reasons for this action are:

a. You were, on 8 October 1999, found sleeping while being posted for duty. For this you received a Letter of Reprimand (LOR), dated 21 October 1999.

b. You were, on 17 June 2000, reading unauthorized material while being on post at Prince Sultan Air Base, Kingdom of Saudi Arabia. For this you received an Article 15, Nonjudicial Punishment (NJP), dated 23 June 2000. This action was filed in your Unfavorable Information File (UIF).

c. You stole, on 15 December 2000, a Samsung cellular telephone from Sprint PCS. For this you received an Article 15, NJP, dated 8 January 2001. This action was filed in your UIF.

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 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, ph. [REDACTED], at building 368, on 8 February 2001 at 1600 hours. You may consult civilian counsel at your own expense. 20 1600


5. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me within three duty days of the date of this letter unless you request and receive an extension for good cause. 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 been scheduled for a physical examination on ²¹ February 2001. You must report to Physical Exams Section in building 700A at ~~0730~~ hours to fill out paperwork. Your follow-up appointment will be at Family Practice, building 700A, at ~~0800~~ hours. You must be in uniform and on time in order to keep the scheduled appointment. ⁰⁹³⁰

8. You have been scheduled for a briefing at separations with TSgt Hobbs, Bldg. 905, 7-7348, on ²² February 2001 at ~~0900~~ hours. Please bring an escort from your unit for assistance. ⁰⁹³⁰

9. 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 at the Area Defense Counsel or your unit orderly room.


Lt Col, USAF
Commander

Attachments:

1. Supporting documents
 - a. LOR, dtd 21 Oct 99
 - b. AF Form 3070, dtd 23 Jun 00
 - c. AF Form 3070, dtd 8 Jan 01
 - d. EPR
2. Airman's Receipt of Notification Memorandum