

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ██	GRADE SRA	AFSN/SSAN ████████████████████
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TYPE GEN	X	PERSONAL APPEARANCE	RECORD REVIEW
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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

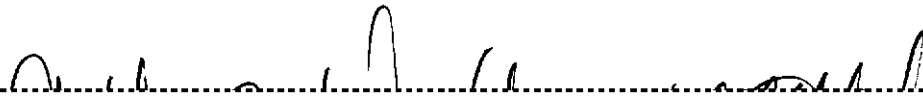
ISSUES A01.13 A94.11 A94.55	INDEX NUMBER A67.10	EXHIBITS SUBMITTED TO THE BOARD
		1 ORDER APPOINTING THE BOARD
		2 APPLICATION FOR REVIEW OF DISCHARGE
		3 LETTER OF NOTIFICATION
		4 BRIEF OF PERSONNEL FILE
		COUNSEL'S RELEASE TO THE BOARD
		ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
		TAPE RECORDING OF PERSONAL APPEARANCE

HEARING DATE 11 Mar 2004	CASE NUMBER FD-2003-00465	
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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.

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



INDORSEMENT		DATE: 3/18/2004
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

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

The applicant personally appeared before the Discharge Review Board (DRB) at Andrews AFB MD on 11 March 2004. The applicant's father appeared as a witness.

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

FINDINGS: Upgrade of discharge is denied.

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

ISSUE:

The applicant submitted four issues, of which only three were actually issues upon which relief might be granted. He argues that he did not engage in obstruction of justice as alleged in the July 2002 letter of reprimand (LOR). He also claims that the command acted improperly in its handling of the disciplinary action by discharging him for, among other things, minor instances of misconduct he was told would not be used against him. Finally, he argues that the command's response was overly harsh. The other issue he mentions concerns his desire to obtain the G.I. Bill and the difficulty he may have finding employment. These latter concerns are not issues upon which the DRB can grant relief.

The applicant was punished under Article 15, UCMJ, on two occasions. He operated a vehicle while intoxicated, for which he received a reduction in rank, forfeitures, extra duty, and a reprimand. He also failed to obey lawful general instructions while assigned to Sheppard AFB TX for training. This latter action was not included in the discharge action. He received six records of individual counseling for being absent without leave, failure to go, failure to remain at work, dereliction of duty, and failing a dorm room inspection. He received an LOR for obstruction of justice.

The majority of the DRB found no evidence of impropriety or inequity in this case upon which to base an upgrade of the discharge characterization.

Issue 1. Applicant contends discharge was inequitable because it was too harsh. The DRB carefully reviewed each of the actions taken against the applicant and the facts surrounding each action. The DRB concluded first that each incident of misconduct did occur. Indeed, the respondent did not contest any of the allegations but for the obstruction of justice allegation. The facts indicate he did. The DRB also determined each disciplinary measure was an appropriate response to the applicant's misconduct. The DRB opined further that through these administrative actions, the applicant had ample opportunities to change his negative behavior. Thus, the characterization of the discharge received by the applicant was appropriate.

Issue 2. Applicant argues that the obstruction of justice allegation was unfair and should not have served as the basis for the discharge. His concern in this regard is well placed as it was this instance of misconduct that apparently triggered the discharge action. The applicant complains that he was never told not to speak with others connected to the investigation. Whether the applicant was ordered or told not to speak with anyone about the investigation is immaterial. The issue is whether he attempted to interfere with a case he knew could result in criminal charges. He acknowledged speaking with a witness regarding the witness's version of events. The DRB does not dispute that he applicant was simply trying to get the witness to

truthfully provide exculpatory facts to law enforcement authorities investigating serious criminal allegations against the applicant. No matter how well intentioned the interference, it was unlawful for a person to attempt to influence a witnesses testimony in a case that relates to charges against that person. This is the very essence of the prohibition against obstruction of justice. The DRB found, therefore, that the misconduct did occur. Moreover, the DRB found that the resulting disciplinary action was proper.

Issue 3. Applicant claims the command acted arbitrarily, capriciously, and unfairly when it based the discharge on instances of misconduct he was led to believe would not be used against him. The DRB found no evidence to support this contention. The disciplinary actions were appropriately documented in accordance with Air Force policy. Moreover, the applicant presented no evidence, other than his testimony, that there was an agreement not to resurrect this documentation. Given the presumption of regularity, and the absence of evidence to the contrary, the DRB concludes that the command acted appropriately and reasonably.

Issue 3. The applicant cited his desire to receive the G.I. Bill benefits and to find employment in his chosen career filed as justifications for upgrade. The DRB notes that when the applicant applied for the G.I. Bill benefits, he would have 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. The same holds true for the applicant's employment concerns. The DRB is sympathetic regarding his concerns, but this is not a basis for an upgrade.

CONCLUSIONS: The majority of 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 majority of 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

[REDACTED]
[REDACTED]
(Former AMN) (HGH SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 15 Aug 02 UP AFI 36-3208, para 5.49 (Misconduct - Minor Disciplinary Infractions). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 24 Nov 80. Enlmt Age: 17 8/12. Disch Age: 21 8/12. Educ: HS' DIPL. AFQT: N/A. A-54, E-46, G-48, M-50. PAFSC: 2A651A - Aerospace Propulsion Journeyman. DAS: 7 Jul 01.

b. Prior Sv: (1) AFRes 12 Aug 98 - 20 Oct 98 (2 months 9 days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 21 Oct 98 for 4 yrs. Svd: 3 Yrs 9 Mo 26 Das, all AMS.

b. Grade Status: A1C - 27 Dec 01 (Article 15, 27 Dec 01)
SrA - 05 Apr 01
A1C-(EPR Indicates): 21 Oct 98-20 Jun 00
Amn - Unknown.

c. Time Lost: None.

d. Art 15's: (1) 27 Dec 01, Eglin AFB, FL - Article 111. You did, on or about 8 Dec 01, at or near Eglin Blvd physically control a vehicle, to wit: a Chevy Blazer while drunk. Reduction to Airman (reduction below A1C suspended), forfeiture of \$600.00 pay per month for 2 months (forfeiture in excess of \$300.00 suspended), 30 days extra duty and a reprimand. (No appeal) (No mitigation)

(2) 29 Mar 99, Sheppard AFB, TX - Article 92. You did, on or about 14 Mar 99, violate a lawful general instruction, to wit: Paragraph 5.2.1, SAFBI 36-2902, dated 15 Oct 97, by wrongfully failing to remain within the limits of Sheppard AFB, Texas. You did, at or near Wichita Falls, Texas, on or about 14 Mar 99, violate a lawful general instruction, to wit: Paragraph 5.2.2., SAFBI 36-2902, dated 15 Oct 97, by wrongfully failing to remain in proper military uniform at all times. Thirty days correctional custody. (No appeal) (No mitigation)

e. Additional: LOR, 19 JUL 02 - Obstruction of justice.
RIC, 26 JUN 02 - Absent without leave.
RIC, 13 JUN 02 - Late for work.

RIC, 23 APR 02 - Failed dorm room inspection.
 RIC, 26 MAR 02 - Failure to complete assigned task properly.
 RIC, 07 MAR 02 - Leaving duty location without permission.
 RIC, 05 MAR 02 - Failure to adhere to prescribed standards.

f. CM: None.

g. Record of SV: 21 Oct 98 - 20 Jun 00 Kadena AB 4 (Initial)
 21 Jun 00 - 03 May 01 Kadena AB 3 (CRO)
 04 May 01 - 03 May 02 Eglin AFB 2 (Annual)REF

(Discharged from Eglin AFB)

h. Awards & Decs: AFTR, NDSM, AFOUA.

i. Stmt of Sv: TMS: (4) Yrs (0) Mos (4) Das
 TAMS: (3) Yrs (9) Mos (26) Das

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

Issue 1: I believe the discharge to be unjust in that I was not informed as to whom the O.S.I investigator involved other than one person whom I did not have contact with.

Issue 2: I spent almost 4 years with no mishaps, including an overseas tour to Okinawa, with an average EPR rating of 4. The General discharge has prevented my being hired with the Postal Service and has also caused denial for my application for the Montgomery G.I. Bill to further my education.

ATCH

1. Congressional Correspondence.

24NOV03/ia



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 46TH TEST WING (AFMC)
EGLIN AIR FORCE BASE, FLORIDA

AUG 06 2002

MEMORANDUM FOR AIG [REDACTED], 46 MXS (AFMC)

FROM: 46 MXS/CC

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for misconduct, specifically minor disciplinary infractions. The authority for this action is AFD 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. On 8 Dec 01, you physically control led a vehicle on Eglin Boulevard while drunk. For this offense you received an Article 15, dated 27 Dec 01.

b. On 4 Mar 02 and 5 Mar 02, you were derelict in the performance of your duties in that you failed to ensure proper control and accountability for the hardware associated with the installation of jet engine components. For these offenses, you received a record of individual counseling, dated 5 Mar 02.

c. On 5 Mar, your supervisors were unable to be located you to assist with cleanup of your assigned duty area. When asked the next day, 6 Mar 02, where you were by Mr. Ramos you said you were at your duty sections. You also told Mr. [REDACTED] that you needed to leave early because your ride home was leaving. Mr. [REDACTED] told you that you must get approval from TSgt [REDACTED]. You chose to leave without his permission. For these offenses, you received a record of individual counseling, dated 7 Mar 02.

d. On or about 19 Mar 02, you were derelict in the performance of your duties in that you failed to properly secure a pressure fuel manifold (PFN) line. On 21 Mar 02, during a pre-inspection an unusually large amounts of threads was showing on the pressure fuel manifold (PFN manifold). Had this gone undetected the operation of the engine and the subsequent fuel leak would have resulted in the loss of the core engine module valued at more than \$850.00. For this offense, you received a record of individual counseling, dated 26 Mar 02.

e. On 23 Apr 02, you failed a no-notice dormitory room inspection. For this offense, you received a record of individual counseling, dated 23 Apr 02.

f. On 12 Jun 02, you failed to report to work on time. For this offense, you received a record of individual counseling, dated 13 Jun 02.

g. On 26 Jun 02, you failed to report to work after returning from leave. For this offense, you received a record of individual counseling, dated 26 Jun 02.

h. On 2 July 02, you obstructed justice by wrongfully interfering with an AFOSI criminal investigation by contacting [REDACTED] in an attempt to get him to change his story relating to the alleged sexual assault charges filed against you for a sexual encounter with a 16 year old female. For this offense, you received a letter of reprimand, dated 19 July 02.

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. **Special pay, bonuses, or education assistance funds may be subject to recoupment.**
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 Capt [REDACTED] at building 451, 882-4185, on 6 Aug at 0900 hours. 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 within **3 workdays** from today 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 on your own behalf, your failure will constitute a waiver of your right to do so.
7. You will complete a medical examination with the 96th Medical Group on 7 Aug 02 at 0715 hours.
8. You have been scheduled for an appointment with the 96th Mission Support Squadron, separations section, on 6 Aug 02 at 1100 hours.
9. **Immediately after** completion of your 96th Mission Support Squadron separations section briefing report to the 96th Traffic Management Office with your completed AFDTC Form 4134 or LGTT Office Form B133. If you have a TMO pickup, it must be before 16 Aug 02
10. You are required to receive a briefing from the Family Support Center prior to your separation. You were scheduled to receive your Transition Assistant Management Program (TAMP) briefing on 13 Aug 02 at 0800 hours.
11. 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 unit orderly room.
12. Execute the attached acknowledgment and return it to me immediately.

[REDACTED]
Major, USAF
Commander, 46 MXS

Attachments:

1. Supporting Documents
2. Airman's Acknowledgment