

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)

GRADE
Former Amn

AFSN/SSAN

TYPE PERSONAL APPEARANCE

RECORD REVIEW

COUNSEL NAME OF COUNSEL AND OR ORGANIZATION

ADDRESS AND OR ORGANIZATION OF COUNSEL

YES No

VOTE OF THE BOARD

MEMBER SITTING

HON	GEN	UOTHC	OTHER	DENY
	X			
	X			
	X			
				X
				X

ISSUES
A94.11
A92.37
A93.10

INDEX NUMBER
A75.00

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
22 Oct 2004

CASE NUMBER
FD-2003-00270

APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL ARE DISCUSSED ON THE ATTACHED AIR FORCE DISCHARGE REVIEW BOARD DECISIONAL RATIONALE

Case heard at Andrews AFB MD via video teleconference with Travis AFB CA.

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

INDORSEMENT

DATE: 10/25/2004

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) via video-teleconference from Travis AFB CA with Andrews AFB MD on 22 October 2004.

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

The following additional documents were submitted during the hearing:

Exhibit 5: Loyola Law School Transcript, 13 September 2004

Exhibit 6. CA State University at Long Beach Transcript, 22 October 2004

Exhibit 7. Resume, [REDACTED]

FINDINGS: Upgrade of discharge to honorable is denied; however, the Board grants upgrade of the discharge to general, under honorable conditions.

The Board finds that neither the evidence of record nor that provided by the applicant substantiates an inequity or impropriety at the time of issuance that would justify a change of the basis for discharge; however, after careful review of the evidence in the record and that presented by the applicant, the board finds that there are certain equitable factors which significantly mitigate the egregiousness of the applicant's offenses and justify upgrade of the discharge characterization from under other than honorable conditions to under honorable conditions (general).

ISSUES:

Issue 1: The applicant contends discharge was inequitable because his chain of command improperly (arbitrarily and capriciously) decided to punish him more severely than was warranted because of a desire to make an example of him. Contrary to the applicant's assertions, the DRB believes his chain of command's actions in prosecuting him were reasonable given the seriousness of the charges against the applicant.

Issue 2: The applicant contends his personality disorders substantially contributed to causing his misconduct and that the Air Force should have diagnosed him earlier, which would have resulted in his receipt of an honorable discharge. The DRB viewed the applicant's personal problems as a matter in extenuation and mitigation of the reason for discharge because they contributed significantly to his misconduct. An earlier diagnosis might have resulted in a more favorable discharge characterization. Absent the personality disorders he may not have committed the misconduct or had such a difficult relationship with his chain of command. Nonetheless, the applicant did engage in serious misconduct for which he was legally and mentally responsible.

Issue 3: The applicant contends he was not guilty of some of the charged offenses or was guilty of a lesser included offense. This contention does not change the fact the applicant voluntarily submitted a request for discharge rather than face a court-martial and that he knew he faced a possible under other than honorable conditions discharge. Nor does it change the fact that there are a significant number of charges which the applicant admits he did commit.

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 regarding the applicant's personal mental problems and their direct relationship to the misconduct, the Board further concludes that the overall quality of applicant's service is more accurately reflected by a general discharge under honorable conditions. The applicant's characterization should be changed to general, under honorable conditions 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

(Former AMN) (HGH AMN)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 31 Mar 99 UP AFI 36-3208, Chapter 4 (Discharge in Lieu of Court Martial). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 16 Feb 77. Enlmt Age: 21 2/12. Disch Age: 22 1/12. Educ: HS DIPL. AFQT: N/A. A-90, E-91, G-96, M-62. PAFSC: 3P031 - Security Apprentice. DAS: 29 Sep 98.

b. Prior Sv: (1) AFRes 12 May 98 - 12 May 98 (1 day) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as Amn 13 May 98 for 4 yrs. Svd: 0 Yrs 10 Mo 19 Das, of which AMS is 7 months 24 days (excludes 2 months 25 days lost time)

b. Grade Status: None.

c. Time Lost: 28 Dec 98 - 23 Mar 99 (2 months 25 days).

d. Art 15's: None.

e. Additional: - (Examiner's Note: Memorandum For 95 ABW/CC Lists an LOR, Dated 6 NOV 98; however, the reason was not listed and the document is missing from the file).

f. CM: None.

g. Record of SV: None.

(Discharged from Edwards AFB)

h. Awards & Decs: AFTR, FPBOB.

i. Stmt of Sv: TMS: (0) Yrs (7) Mos (25) Das
TAMS: (0) Yrs (7) Mos (24) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 15 May 03.
(Change Discharge to Honorable)

Issue 1: It is my contention that Security Forces personnel failed to provide fair and equal treatment under military law because of a conflict of interest. Specifically, my charges tended to be more severe because of the

desire to make an example out of my misconduct within the squadron.

Issue 2: During my first few months at Edwards AFB, I saw health care professionals on three separate occasions, yet was never given a full psychiatric evaluation. After being incarcerated I was finally evaluated by a team of psychiatrists, whose findings indicated that my personality disorders indeed disqualified me from active duty. Had this information been known in my early months at Edwards, I would likely have qualified for an administrative separation. My total service in the Air Force amounted to less than 8 months.

Issue 3: Charge I, desertion, is erroneous. I was AWOL for only 21 days, and voluntarily turned myself in.

Issue 4: Charge III is false. I had both a doctor's note and my first sergeant's permission to take leave until November 6th, 1998. I was not derelict in the performance of my duties, since I was not even required to be on base during the time of the alleged offense. This charge is the result of miscommunication between my first sergeant and the squadron commander as to when I was due to arrive on base.

ATCH

1. School Transcript.
2. BA Degree.
3. AA Degree.
4. Omicron Delta Epsilon Certificate.
5. Academic Honors Recognition.
6. Masters Degree Acceptance Letter.
7. Law School Acceptance.
8. Memorial Award.
9. FBI/DOJ Clearance.
10. Two Letters of Support.
11. Credit Report.
12. Resume.

7JUL03/ia

CHARGE SHEET

I. PERSONAL DATA

1. NAME OF ACCUSED (Last, First, MI) [REDACTED]			2. SSN [REDACTED]	3. GRADE OR RANK Amn	4. PAY GRADE E-2
5. UNIT OR ORGANIZATION 95th Security Forces Squadron Edwards Air Force Base, California (AFMC)				6. CURRENT SERVICE	
				a. INITIAL DATE 13 May 98	b. TERM 4
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED Pretrial Confinement Restriction to Edwards Air Force Base, CA	9. DATE(S) IMPOSED 18 Jan 99 6-10 Nov 98	
a. BASIC	b. SEA/FOREIGN DUTY	c. TOTAL			
\$1,075.80	\$0.00	\$1,075.80			

II. CHARGES AND SPECIFICATIONS

10. CHARGE: I VIOLATION OF THE UCMJ, ARTICLE 85

SPECIFICATION:

In that AIRMAN [REDACTED] 95th Security Forces Squadron, United States Air Force, did, on or about 28 December 1998, without authority and with intent to remain away therefrom permanently, absent himself from his unit, to wit: 95th Security Forces Squadron, located at Edwards Air Force Base, California, and did remain so absent in desertion until on or about 18 January 1999.

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 91

Specification 1: In that AIRMAN [REDACTED] 95th Security Forces Squadron, United States Air Force, at or near Edwards Air Force Base, California, on or about 5 November 1998, was disrespectful in deportment toward Staff Sergeant [REDACTED] a superior noncommissioned officer, then known by the said AIRMAN [REDACTED] to be a superior noncommissioned officer, who was then in the execution of his office, by repeatedly interrupting Staff Sergeant [REDACTED] rolling his eyes, and yelling at Staff Sergeant [REDACTED] during a counseling session.

Specification 2: In that AIRMAN [REDACTED] 95th Security Forces Squadron, United States Air Force, at or near Edwards Air Force Base, California, on or about 18 January 1999, was disrespectful in language toward Staff Sergeant [REDACTED] a superior noncommissioned officer, then known by the said AIRMAN [REDACTED] to be a superior noncommissioned officer, who was then in the execution of his office, by repeatedly calling him "fuckhead" and saying "from now on, I'm going to call you Fuckhead Spina," or words to that effect.

SEE ATTACHED CONTINUATION SHEET

III. PREFERRAL

11a. NAME OF ACCUSER (Last, First, MI) [REDACTED]	b. GRADE Lt Col	c. ORGANIZATION OF ACCUSER 95th Security Forces Squadron	e. DATE 27 Jan 99
------------------------------------------------------	--------------------	-------------------------------------------------------------	----------------------

AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this 27th day of JANUARY, 19 99, 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

Captain
Grade

[REDACTED]

Air Force Flight Test Center
Organization of Officer

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

Continuation of DD Form 458:

CHARGE II: VIOLATION OF THE UCMJ, ARTICLE 91

Specification 3: In that AIRMAN [REDACTED], 95th Security Forces Squadron, United States Air Force, at or near Edwards Air Force Base, California, on or about 18 January 1999, was disrespectful in language toward Staff Sergeant [REDACTED], a superior noncommissioned officer, then known by the said AIRMAN [REDACTED] to be a superior noncommissioned officer, who was then in the execution of his office, by making derogatory comments to him and saying to him "how did a fuck like you ever become a NCO," or words to that effect.

CHARGE III: VIOLATION OF THE UCMJ, ARTICLE 92

Specification: In that AIRMAN [REDACTED], 95th Security Forces Squadron, United States Air Force, who knew of his duties at Edwards Air Force Base, California, on or about 5 November 1998, from about 2000 hours to about 0100 hours, was derelict in the performance of those duties in that he willfully failed to perform any of his assigned tasks as it was his duty to do.

CHARGE IV: VIOLATION OF THE UCMJ, ARTICLE 117

Specification 1: In that AIRMAN [REDACTED], 95th Security Forces Squadron, United States Air Force, did, at or near Edwards Air Force Base, California, on or about 5 November 1998, wrongfully use provoking words, to wit: "typical Mid Western dumbass with no education," "dick," "fag," and "hey Pokorney fuck off ass hick that fucks his mother," or words to that effect, towards Airman First Class [REDACTED], United States Air Force.

Specification 2: In that AIRMAN [REDACTED], 95th Security Forces Squadron, United States Air Force, did, at or near Edwards Air Force Base, California, on or about 28 December 1998, wrongfully use provoking words, to wit: "mother fucker," or words to that effect, towards Airman [REDACTED], United States Air Force.

CHARGE V: VIOLATION OF THE UCMJ, ARTICLE 134

Specification 1: In that AIRMAN [REDACTED], 95th Security Forces Squadron, United States Air Force Base, was at or near Edwards Air Force Base, California, on or about 5 November 1998, disorderly.

Specification 2: In that AIRMAN [REDACTED], 95th Security Forces Squadron, United States Air Force, was, at or near Edwards Air Force Base, California, on or about 18 January 1999, disorderly.