

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE A1C	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	Florida Department of Veteran's Affairs
X		

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

ISSUES	A92.35 A67.50 A92.00 A94.00	INDEX NUMBER	A61.00 A60.00 A92.02	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 Apr 2004	CASE NUMBER FD-2003-00408	
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APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONAL 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
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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

FD-2003-00408

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

The applicant personally appeared before the Discharge Review Board (DRB) at Andrews Air Force Base, Maryland via video teleconferencing from Fort Gillem, Georgia.

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

FINDINGS: Upgrade of discharge to honorable 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:

The Board concluded the disciplinary infractions were a significant departure from the conduct expected of all military members.

Issue 1. Applicant contends discharge was inequitable because it was predominantly based on an isolated event during a period of otherwise good performance. The applicant was discharged for conduct prejudicial to good order and discipline, or of a nature to bring discredit to the Air Force, citing an aggravated assault, an underage drinking incident, and an assault that was not disclosed on the applicant's Questionnaire for National Security Positions (QNSP). The respondent acknowledges the incident underlying the aggravated assault. He contends that he was first assaulted by a group of men in the parking lot. He fought them off and was able to return to his apartment. When he left his apartment a short time later, the men again approached him and the respondent, who was now carrying a handgun, fired twice in their direction shooting one of the men in the wrist. The respondent later pled guilty to misdemeanor assault charges. With respect to the underage drinking incident, the applicant contends that he did not drink alcohol while under the age of 21 years, noting the results of an alcohol analysis registering 0.00. With respect to the QNSP, the applicant claims that he disclosed the assault to the recruiter and that the individual working on his security clearance knew about the assault, questioned him about it, after which he was issued a security clearance. Completion of the security clearance is reflected in the applicant's records.

Pursuant to section 5H of AFI 36-3208 airmen are subject to discharge when there is one or more act of misconduct during the period of enlistment. Airmen may be discharged for a single offense for which a punitive discharge is authorized. Where airmen are discharged for a pattern of misconduct, discharge may not be initiated until airmen have been counseled and given an opportunity for rehabilitation. Counseling and rehabilitation requirements do not apply to discharges based on the commission of a single serious offense. In this instance, the applicant was discharged for a pattern of misconduct therefore requiring counseling and rehabilitation. No counseling or rehabilitative action was taken for the first cited incident, involving the failure to disclose information on the QNSP. The applicant received a LOR for the next incident. A full year later, the applicant received a LOR for the incident of aggravated assault. Under these circumstances, these administrative actions are inadequate to satisfy the counseling and rehabilitation requirements. However, the DRB finds that this deficiency did not result in an inequity because the applicant could have been discharged for the commission of a single serious offense, under paragraph 5.52.

Issue 2. The applicant states that the discharge was inappropriate because it was based on a pre-service civilian arrest which was later dismissed by the court. As noted previously, the applicant was subject to

discharge based on the aggravated assault for the commission of single serious offense. Reference to the applicant's failure to disclose a pre-service civilian arrest did not result in an inequity to the applicant.

Issue 3. The applicant further contends that the discharge was inappropriate because the discharge was effectuated while the civilian prosecution for aggravated assault was still pending before the court. There is no requirement that discharge actions be stayed pending disposition of criminal charges, provided there is adequate evidence to support the underlying offense. Indeed, the Air Force is free to take its own discharge action against an individual based on the facts surrounding the incident. In this instance the applicant was not discharge based on a civilian conviction. Instead, he was discharged for shooting a man in the wrist, an act he admitted committing.

Issue 4. The applicant called attention to his good duty performance and military character, noting that his conduct was not prejudicial to good order and discipline. The applicant's duty performance, as evidenced by his performance reports and character statements, is excellent and he seems to be continuing that trend as a civilian. However, the DRB concluded that the incident resulting in the shooting was significant departure from the conduct expected of military members, outweighing the positive aspects of the applicant's military record.

CONCLUSIONS: The Discharge Review Board concludes that despite errors in correctly identifying the basis for discharge, the discharge was nonetheless 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. While the DRB has the authority to change the reason for discharge from a pattern of misconduct for conduct prejudicial to good order and discipline to the commission of a serious offense, this change could negatively affect the applicant.

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

[REDACTED]
[REDACTED]

(Former A1C) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 10 Apr 03 UP AFI 36-3208, para 5.50.2 (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 14 Aug 79. Enlmt Age: 20 7/12. Disch Age: 23 7/12. Educ: HS DIPL. AFQT: N/A. A-55, E-52, G-55, M-50. PAFSC: 2T251 - Air Transportation. DAS: 26 Jul 00.

b. Prior Sv: (1) AFRes 21 Mar 00 - 11 Apr 00 (22 Days) (Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as AB 12 Apr 00 for 4 yrs. Svd: 2 Yrs 11 Mos 29 Das, all AMS.

b. Grade Status: A1C - 12 Aug 01
AMN - 12 Oct 00

c. Time Lost: None.

d. Art 15's: None.

e. Additional: LOR, 31 JAN 03 - Aggravated assault.
MFR, 28 AUG 00 - Displaying poor military bearing.
LOR, 25 AUG 00 - Arrested for underage drinking.

f. CM: None.

g. Record of SV: 12 Apr 00 - 11 Dec 01 Pope AFB 5 (Initial)

(Discharged from Pope AFB)

h. Awards & Decs: AFTR, NDSM.

i. Stmt of Sv: TMS: (3) Yrs (0) Mos (21) Das
TAMS: (2) Yrs (11) Mos (29) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 28 Jul 03.
(Change Discharge to Honorable)

Issue 1: My discharge was equitable because it was mainly based on an isolated incident in nearly 36 mos of service in which my conduct and performance were productive and sincere.

Issue 2: My discharge was misguided because my preservice civilian arrest, which I specifically told my recruiter about, was used in my discharge proceedings. The arrest was later dropped in court.

Issue 3: My enlistment was terminated before my civilian case was resolved in the court of law. I was not given the presumption of innocence and right to due process that I rightfully deserved.

Issue 4: I kept the standards for military conduct and I've been a proven performer, which is shown by my EPR's and character statements. My conduct was not prejudicial to good order and discipline (sic).

ATCH

1. Enlisted Performance Report.
2. Character Statements.
3. Discharge Documents.

17 Sep 03/cr



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 43D AIRLIFT WING (AMC)
POPE AIR FORCE BASE, NORTH CAROLINA

MAR 18 2003

MEMORANDUM FOR A1C [REDACTED] 3 APS

FROM: 3 APS/CC
3560 Surveyor St
Pope NC 28308

SUBJECT: Notification Memorandum

1. I am recommending your discharge from the United States Air Force for a Pattern of Misconduct. The authority for this action is AFPD 36-32 and AFI 36-3208, paragraph 5.50, specifically paragraph 5.50.2, Conduct Prejudicial to Good Order and Discipline. Approval of this recommendation for discharge could result in a characterization of an Under Other Than Honorable Conditions (UOTHC), if the convening authority determines such characterization is warranted and directs initiation of a discharge board. I am recommending that your service be characterized as under honorable conditions (general).
2. My reasons for this action are:
 - a. On or about 18 Aug 02, you committed an aggravated assault upon a male by shooting him in the wrist, with a loaded firearm, which resulted in grievous bodily harm to him, as documented by a Letter of Reprimand (LOR), dated 31 Jan 03.
 - b. On or about 5 Aug 00, you were apprehended by Security Forces for underage drinking while in dormitory number 399, as documented by a LOR, dated 25 Aug 00.
 - c. On or about 17 Dec 98, you were charged with assaulting your brother [REDACTED] which you did not disclose, as required, on the police record portion of the Questionnaire for National Security Positions at the time of your enlistment, dated 21 Mar 00, as documented by your questionnaire for National Security Positions, a Complaint from the State of Alabama Unified Judicial System, dated 17 Dec 98, and a Case Action Summary from the State of Alabama, dated 20 Jan 99.
3. The 43d Airlift Wing Commander, who exercises SPCM jurisdiction, or a higher authority, will decide whether you will be discharged or retained in the Air Force. Copies of the documents to be forwarded to the Separation Authority in support of this recommendation are attached. If you are discharged, you will be ineligible for reenlistment in the Air Force, and any special pay, bonus, or education assistance funds may be subject to recoupment.

4. You have been scheduled for a physical examination with Capt [REDACTED] Report to Family Practice Clinic in the Pope Clinic on 18 Mar 03 at 1000 hours. In addition, report to Physical Exams/Lab ASAP for HIV screening.
5. **You have the right to consult counsel. Military legal counsel has been obtained to assist you. Contact SSgt [REDACTED] (extension 4-2362) at the Area Defense Counsel's office immediately after being served with this notification memorandum. At that time an appointment will be scheduled for you to consult the Area Defense Counsel.** Instead of the appointed counsel, you may have another, if the lawyer you request is in the active military service and is reasonably available as determined according to AFI 51-201. In addition to military counsel, you have the right to employ civilian counsel. The Air Force does not pay expenses incident to the employment of civilian counsel. Civilian counsel, if employed, must be readily available.
6. You have the right to submit a statement in your own behalf. Any statements you want the Separation Authority to consider must reach me by 21 MAR at 0730 unless you request and receive an extension for good cause shown. Any submitted statements will be forwarded to the Separation Authority.
7. If you fail to consult counsel or to submit statements in your own behalf in **three days**, your failure will constitute a waiver of your right to do so.
8. 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 orderly room.

[REDACTED]
Major, USAF
Commander

Attachments:

1. LOR, dated 31 Jan 03
2. LOR, dated 25 Aug 00/Response, dated 30 Aug 00/DHHS 3908, dated 5 Aug 00/DD Form 629, dated 5 Aug 00
3. Questionnaire for National Security Positions (9 pp), dated 21 Mar 00/State of Alabama Unified Judicial System Complaint Form (2 pp)