

**AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD**

<b>NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL)</b> ██	<b>GRADE</b> A1C	<b>AFSN/SSAN</b> ████████████████████
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<b>TYPE GEN</b>	<b>X</b>	<b>PERSONAL APPEARANCE</b>		<b>RECORD REVIEW</b>	
<b>COUNSEL</b>		<b>NAME OF COUNSEL AND OR ORGANIZATION</b>	<b>ADDRESS AND OR ORGANIZATION OF COUNSEL</b>		
<b>YES</b>	<b>No</b>				
	<b>X</b>				

MEMBER SITTING	VOTE OF THE BOARD				
	HON	GEN	UOTHC	OTHER	DENY
<div style="border: 1px dashed black; width: 100%; height: 100%;"></div>	X				
	X				
					X
	X				
	X				

<b>ISSUES</b>	A94.11 A01.13 A94.05 A90.07 A90.09	<b>INDEX NUMBER</b>	A67.90	<b>EXHIBITS SUBMITTED TO THE BOARD</b>
				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

<b>HEARING DATE</b>	<b>CASE NUMBER</b>	
23 Apr 2004	FD-2003-00464	

**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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR

<b>INDORSEMENT</b>		<b>DATE: 5/3/2004</b>
<b>TO:</b> SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	<b>FROM:</b> SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING, 3RD FLOOR ANDREWS AFB, MD 20762-7002	

**GENERAL:** The applicant appeals for an upgrade of the characterization of discharge to honorable.

The applicant personally appeared before the Discharge Review Board (DRB) at Andrews AFB MD on April 23, 2004, via VTC from Ft. Gillem GA. He was represented by Mr. [REDACTED] of the Florida Department of Veterans Affairs.

The attached brief contains available pertinent data on the applicant and the factors leading to the discharge. The applicant submitted the following additional evidence - Exhibit #6: Character Letter from MG, the applicant's father; Exhibit #7: Character Letter from RA.

**FINDINGS:** The Board grants the requested relief.

**ISSUE:**

The applicant was discharged with a general service characterization for conduct prejudicial to good order and discipline. He received a single Article 15 for his part in a racially segregated brawl involving approximately 10-15 participants that took place at the NCO club parking lot and for allegedly leaving the installation to avoid law enforcement investigators.

Issue 1. The applicant contends discharge was inequitable because it was too harsh. The DRB agrees. The only disciplinary action supporting the applicant's discharge was the single Article 15. The DRB found two problems with this fact. First, the DRB was uncomfortable with the notion of discharging a member with an adverse service characterization on the basis of a single Article 15. To be sure, it is permissible for the command to take such action, particularly when the action concerns a serious fight. But in this case, the DRB thought this Article 15 to be insufficient to support the discharge action. The primary concern in this regard was whether and to what extent the applicant was truly involved in the fight - the file contained no evidence or other information concerning the fight, other than the Article 15. Second, Article 15 actions are well known to be rehabilitative tools. There was absolutely no indication the applicant was given an opportunity to avail himself of the rehabilitative opportunity. If discharge was a possibility given the seriousness of the charges, a summary court-martial (a purely disciplinary tool) followed by the discharge would have been more appropriate.

Issue 2. The applicant contends that the command acted arbitrarily and capriciously and that there was supervisory mismanagement. The DRB agrees. The applicant commented, rather offhandedly in response to a question from a Board member, that his first sergeant told him he would not help him deal with this issue because there was nothing he could do. The DRB found the applicant's statement in this regard credible because the response was solicited and because the applicant probably would have had no way to know how the DRB might react to such a comment. The DRB was disturbed by the prevalence of such an attitude, especially from the first sergeant. The DRB was also troubled by the lack of documentation supporting the Article 15, the apparent "quick trigger" nature of the case, the failure of the command to use the Article 15 as a rehabilitative tool, and the poor application of disciplinary action. With regard to the latter, if the fight was so serious that it alone provided a basis for the applicant's discharge (e.g., because the two men were seriously hurt or the applicant started the melee), then the Article 15 was not the appropriate disciplinary action. On the other hand, if the incident was not serious enough to justify more than an Article 15, then a discharge based on the single event was (as explained above) not appropriate.

Issue 3. The applicant contends there was insufficient evidence to support the disciplinary action and discharge. The DRB agrees. There was no evidence in the file but for the Article 15 action. Ordinarily, the presumption of regularity is sufficient to sustain the action. However, in this case the DRB was unwilling to apply the presumption of regularity because several significant possibilities could not be ignored: the applicant could easily have been fighting in self-defense, the applicant could easily have been misidentified by the other Caucasian participants, or the Caucasian participants may have designed their statements to place the blame on the applicant (and his cohorts) in an effort to escape culpability for their roles in the fight.

**CONCLUSIONS:** The Discharge Review Board concludes that the discharge was not consistent with the procedural and substantive requirements of the discharge regulation.

In view of the foregoing findings the Board concludes that there exists a legal and equitable basis for upgrade of discharge.

The applicant's characterization should be changed to honorable 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 AMN) (HGH A1C)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Disch fr USAF 4 May 92 UP AFR 39-10, para 5-47b (Misconduct - Conduct Prejudicial to Good Order and Discipline). Appeals for Honorable Disch.

2. **BACKGROUND:**

a. DOB: 25 Sep 70. Enlmt Age: 18 4/12. Disch Age: 21 7/12. Educ:HS DIPL. AFQT: N/A. A-45, E-54, G-48, M-49. PAFSC: 90230 - Apprentice Medical Services Specialist. DAS: 2 Dec 91.

b. Prior Sv: (1) AFRes 31 Jan 89 - 11 Dec 89(10 Months 11 Days)(Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enld as A1C 12 Dec 89 for 4 yrs. Svd: 2 Yrs 4 Mos 23 Das, all AMS.

b. Grade Status: AMN - 5 Mar 92 (Article 15, 5 Mar 92)

c. Time Lost: None.

d. Art 15's: (1) 5 Mar 92, Tinker AFB, OK - Article 128 & 134. You did, on or about 25 Jan 92, unlawfully strike AMN [REDACTED] in the face, chest, and other parts of his body, with your hands and fists. Further investigation has disclosed that you did, on or about 25 Jan 92, unlawfully strike SRA [REDACTED] in the face, chest, and other parts of his body with your hands and fists. Further investigation also has disclosed that you did, on or about 25 Jan 92, wrongfully endeavor to impede an investigation by staying off-base with individuals in an attempt to elude contact with law enforcement officials, although you were aware of their attempts to contact you for questioning regarding the assault which occurred in the parking lot of the Tinker AFB NCO Club on 25 Jan 92. Reduction to AMN, forfeiture of \$200.00 per month for two months, 30 days extra duty, and a reprimand. (Appeal/Denied)(No mitigation)

e. Additional: None.

f. CM: None.

g. Record of SV: 12 Dec 89 - 11 Aug 91 Ankara AS 3 (Initial)

(Discharged from Tinker AFB)

h. Awards & Decs: NDSM, AFTR.

i. Stmt of Sv: TMS: (3) Yrs (3) Mos (4) Das  
TAMS: (2) Yrs (4) Mos (23) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 22 Sep 03.  
(Change Discharge to Honorable)

Issue 1: My undesirable discharge has restricted me from using my GI Bill and also from getting a VA loan to purchase a home which I really need. The GI Bill for education (sic) to make more money.

**ATCH**  
None.

31 Oct 03/cr

FD2003-00464



DEPARTMENT OF THE AIR FORCE  
USAF HOSPITAL, TINKER (AFLC)  
TINKER AIR FORCE BASE, OKLAHOMA 73145-5300

REPLY TO  
ATTN OF: CC

8 April 1992

SUBJECT: Notification Letter

TO: Amn [REDACTED] USAF Hosp

1. I am recommending your discharge from the United States Air Force for Misconduct. The authority for this action is AFR 39-10, paragraph 5-47b, Conduct Prejudicial to Good Order and Discipline. 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:

On or about 25 Jan 92, at Tinker AFB, OK, you unlawfully struck two persons in the face, chest, and other parts of their body with your fists and hands. On that same date, you also wrongfully impeded an investigation into the incident by attempting to elude contact with law enforcement officers. As a result, you received an Article 15, dated 5 Mar 92. Punishment was reduction in rank to Airman, effective 5 Mar 92, forfeiture of \$200 month pay for two months (suspended to 1 Sep 92), 30 days extra duty, and a reprimand. See Atch 1.

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.

3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made arrangements for you to consult Capt [REDACTED] at Bldg 452, Tinker AFB, OK, on 8 or 9 Apr 92, on a walk-in basis between the hours of 0800 and 1000. You may consult civilian counsel at your own expense.

4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 13 Apr 92, unless you request and receive an extension for good cause shown. I will send them to the separation authority.

5. 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.

6. You were scheduled for a medical examination on 6 Mar 92, and you should have reported to the Tinker AFB Hospital, Physical Exam Section, on that date for the examination.

7. 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.

8. Execute the attached acknowledgment and return it to me immediately.



LT, USAF Atchs  
Commander, Medical Section Squadron Art 15, dtd 5 Mar 92