

AIR FORCE DISCHARGE REVIEW BOARD HEARING RECORD

NAME OF SERVICE MEMBER (LAST, FIRST MIDDLE INITIAL) ████████████████████	GRADE AMN	AFSN/SSAN ████████████████
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TYPE UOTH	PERSONAL APPEARANCE	X	RECORD REVIEW
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COUNSEL	NAME OF COUNSEL AND OR ORGANIZATION	ADDRESS AND OR ORGANIZATION OF COUNSEL			
YES	No	ATTN: ██████████ 1608 K STREET NW WASHINGTON DC 20006			
X					

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

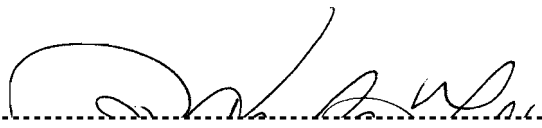
ISSUES	A93.23 A92.15 A92.21 A94.07	INDEX NUMBER	A67.00	EXHIBITS SUBMITTED TO THE BOARD	
				1	ORDER APPOINTING THE BOARD
				2	APPLICATION FOR REVIEW OF DISCHARGE
				3	LETTER OF NOTIFICATION
				4	BRIEF OF PERSONNEL FILE
					COUNSEL'S RELEASE TO THE BOARD
					ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE
					TAPE RECORDING OF PERSONAL APPEARANCE

HEARING DATE	13 May 2004	CASE NUMBER	FD-2003-00519
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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, the right to a personal appearance with/without counsel, and the right to submit an application to the AFBCMR.



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INDORSEMENT		DATE 5/13/2004
TO:	FROM:	
SAF/MRBR 550 C STREET WEST, SUITE 40 RANDOLPH AFB, TX 78150-4742	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

CASE NUMBER

FD-2003-00519

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

The applicant was offered a personal appearance before the Discharge Review Board (DRB) but declined to exercise this right.

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.

Issues 2, 3, 6, 7, and 9. Applicant was discharged for misconduct. The records indicate the applicant received an Article 15 and a vacation of suspended punishment. The offenses documented therein included violating the phase program by visiting the dorm room of a member of the opposite sex between the hours of 0200 and 0600, and wrongfully wearing an earring on a military installation in violation of a general instruction. Additionally, information found in the medical records disclosed the following: before 2 April 2001, member had two Letters of Reprimand (LOR) for unauthorized visits to his girlfriend's room and bay, he had two LORs for wearing an earring on the base and for smoking in uniform, and he had yet a fifth LOR for verbally provoking and assaulting another airman. These documents further reflected member's "remarkable tendency to allow his personal life to affect his work performance." Subsequently in June 2001, member was diagnosed with an adjustment disorder with mixed disturbance of emotions and conduct after making a suicidal gesture and being admitted for in-patient care; he threatened to jump off a hotel balcony where his girlfriend was staying with another friend, and stated he did it to get attention. Earlier that day he had violated the no contact order regarding his girlfriend, with who his command noted he'd had many altercations. Five days earlier that same week, applicant had threatened to kill his girlfriend and another service member. During that time period he had pulled a knife and had to be restrained by a fellow service member. Unfortunately, member's discharge processing files were unavailable to the Board for review due to being missing from the record. Because member's discharge file was unavailable to the Board for review, the Board was unable to conclusively ascertain if there was yet more misconduct on member's part that formed additional bases for the discharge. The Board also could not conclusively determine if at the time of the discharge member consulted counsel, submitted statements on his own behalf, or requested he be discharged in lieu of court martial. Applicant notes he was in pre-trial confinement at the Marine Corps Brig at Quantico, VA, and he accepted the under other than honorable conditions (UOTHC) discharge rather than wait for a court martial. The record confirms he had lost time from 14 June 2001 to 20 August 2001; he was discharged from in-patient psychiatric care on 12 June 2001, and was discharged from the Air Force on 22 August 2001. The record also reflects that member was charged with disobeying a lawful command, and with obstructing justice. Unfortunately, the Board is not able to substantiate any inequity or impropriety in the discharge actions, and lacking documented evidence from the applicant to the contrary, the Board relies on the presumption of regularity and finds the discharge proper and without basis for an upgrade. The Board concluded applicant's misconduct documented in the Articles 15 and medical records alone was a significant departure from conduct expected of all military members and the characterization of the discharge received by the applicant was appropriate on that basis. No inequity or impropriety could be found in this discharge in the course of the records review.

Issues 1 and 3. While these contentions may be true, they do not provide a basis in mitigation or extenuation to warrant an upgrade. The seriousness of member's willful misconduct significantly outweighs any positive aspects of his period of service.

Issues 4 and 5. These issues could not be substantiated in the record or applicant's submission to the Board. Thus the Board found them without merit and insufficient to justify considering an upgrade.

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

[REDACTED]
[REDACTED]
(Former AMN) (HGH A1C)

MISSING DOCUMENTS

1. **MATTER UNDER REVIEW:** Appl rec'd a UOTH Disch fr USAF 22 Aug 01 UP AFI 36-3208 (Misconduct). Appeals for Honorable Discharge.

2. **BACKGROUND:**

a. DOB: 25 Apr 80. Enlmt Age: 19 1/12. Disch Age: 21 3/12. Educ: HS DIPL. AFQT: N/A. A-82, E-64, G-62, M-54. PAFSC: 1N231 - Signals Intelligence Production Specialist. DAS: Unknown.

b. Prior Sv: (1) AFRes 10 Jun 99 - 4 Aug 99 (1 month 26 days)(Inactive).

3. **SERVICE UNDER REVIEW:**

a. Enlisted as AB 5 Aug 99 for 6 yrs. Svd: 2 Yrs 0 Mo 18 Das, of which AMS is 1 yr 10 months 12 days (excludes 2 months 6 days lost time).

b. Grade Status: AMN - 24 Oct 00 (Vacation of Article 15, 24 Jan 01)
A1C - 17 Sep 99

c. Time Lost: 14 Jun 01 - 20 Aug 01 (2 months 6 days).

d. Art 15's: (1) 24 Jan 01, Vacation, Corry Station, FL - Article 92. You did, on or about 4 Jan 01, fail to obey a lawful general instruction, to wit: Table 2.5, Item 7, AFI 36-2903, dated 8 Jun 98, by wrongfully wearing an earring on a military installation. Reduction to Airman. (No appeal) (No mitigation)

(2) 24 Oct 00, Corry Station, FL - Article 92. You, who knew of your duties, on or about 2 Oct 00, were derelict in the performance of those duties in that you willfully visited the dormitory room of a member of the opposite sex between the hours of 0200 and 0600 and therefore, failed to adhere to the phase program, as it was your duty to do. Suspended reduction to Airman, and 7 days extra duty. (No appeal) (No mitigation)

e. Additional: Unknown.

f. CM: None.

g. Record of SV: None.

(Discharged from Ft Meade)

h. Awards & Decs: AFTR, SAEMR W/1 DEV.

i. Stmt of Sv: TMS: (2) Yrs (0) Mos (8) Das
TAMS: (1) Yrs (10) Mos (12) Das

4. **BASIS ADVANCED FOR REVIEW:** Appln (DD Fm 293) dtd 14 Nov 02.
(Change Discharge to Honorable)

Issue 1: Did well in all my schooling, even with the minor infractions that occurred while in technical school and graduated from all schools. I was, and continue to be, ready for duty.

Issue 2: The attached mental health evaluation was basically positive with the exception of granting a security clearance at the then present time. Please note the longer I did not work the more in trouble I became.

Issue 3: All my problems were basically during off-duty periods.

Issue 4: My supervisor rarely had opportunities to interface with me when I had problems. The majority of all infractions were dealt with directly by the commander through the first sergeant.

Issue 5: This same commander was himself relieved of command due to loss of confidence in his command and leadership abilities, by his commander.

Issue 6: I believe that adequate counseling could have helped me avoid many of the problems I had.

Issue 7: After considerable incarceration (72 days) in the Marine Corps Brig at Quantico, VA in pretrial confinement, I would have done anything to get out. Thus I accepted the Other Than Honorable Discharge rather than have to wait for my Courts-Martial. Even my defense attorney recommended that I take it.

Issue 8: From the Letter of Recommendation of my current civilian supervisor, you can see that I have made extensive and positive modifications in my behavior.

Issue 9: Block 29, DD Form 214, 08/22/2001, indicates the period of 14 June 2001 - 20 August 2001, as time lost. There should have been no time lost as this time was pretrial confinement only.

ATCH

1. DD Form 214.
2. Letter of Recommendation, 7 Aug 02.
3. Mental Health Evaluation, 2 Apr 01.
4. Memorandum - Command Directed Mental Health Evaluation.